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1825







New York (City) Common Council
REPORT

OF THE COMMITTEE ON LAWS,

TO THE

CORPORATION

OF

THE CITY OF NEW-YORK,

ON THE SUBJECT OF

INTERMENT,

WITHIN THE POPULOUS PARTS OF THE CITY.

READ AND ADOPTED AT A SPECIAL MEETING OF
THE SAID CORPORATION,

ON THE 9th JUNE, 1825,

AND PUBLISHED BY THEIR ORDER.



New-York :

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INTRODUCTION.

IN submitting the following Report to the public, pursuant to the direction of the Common Council, the Committee on Laws deem it proper to state, that the petition by the delegates, from a portion of the religious societies, for a modification of the Law relating to Interment, to the southward of Grand-street, so as to admit the use of what are denominated private vaults, was, in the first instance, referred to the Standing Committee of the Board on lands and places. In the Report of that Committee, made on the 11th day of April last, they stated as a preliminary objection to their taking any measures on the subject, the pendency of several suits for and against the Corporation, and that they deemed it improper for them to express an opinion, on a subject involving legal questions; whereupon the application was referred to the Committee on Laws

This Committee, on the 11th of May last, reported in substance, to the Common Council, that it was proposed by the petitioners, that the law might be so far modified as to permit the use of private or family vaults, in an unrestricted manner—and of public or church vaults, during the cold season, comprehending about six months of the year, though the latter privilege would be dispensed with, for the sake of the former—And that the petitioners assented to an unqualified relinquishment of the use of graves within the prohibited limits. They further stated, that the proposed change was brought forward, by some of the religious societies, in their distinctive character as such, because they had sold to their members respectively, the land which had been improved and used for vaults—and that this change was sought for by the latter, upon the considerations and for the reasons which are stated and considered at length in the present Report. That since June 1823, at which time the present Law went into operation, fifty-one violations of it had taken place—that five of the suits that had been commenced for such violations, had proceeded to judgment, in the court of Common Pleas of this city, and had been removed to the Supreme Court by

writs of error—that seventeen of the suits were still pending—and the residue had been settled. And that the Brick Presbyterian church had prosecuted the Corporation, for an infringement by means of the law in question, as was alleged, of their right to bury and to permit burials, in their ground, near the Park; which right they claimed under a lease to them from the Common Council—in which suit the damages claimed were thirty thousand dollars.

They added, that there were belonging to the different churches, within the prohibited limits, 87 public and 417 private vaults; and that during the year preceding the passage of the Law, there were 821 interments within those limits, namely, in graves 501, in public vaults 256, and in private vaults 64. And they concluded, by submitting to the Board, the question, whether the proposed alteration in the Law ought to be made, without expressing any opinion on the same.

On the presentation of this Report, a resolution was submitted by Alderman *Ireland*, that so much of the Law as prohibits the interment of the dead, in private vaults, be repealed; provided that the erection of any new vaults, within the limits prescribed by the Law, should in future be prohibited.

This Report, and resolution, were at that meeting laid on the table for consideration, and on the 23d of May were called up, and on motion of the *Recorder*, the said Report, and all petitions and matters, on the subject of Interment, were referred back to the Committee on Laws, to the end that they might amend their Report, and express an opinion upon the matters referred to them; and they were directed to make such amended Report at the (then) next meeting of the Common Council. The following (for which the Committee on Laws are largely indebted to the labours of others, their duty having been mostly that of compiling) was prepared and submitted to the Board accordingly, on the 9th of June last, on which day, it received the sanction of the Common Council.

New-York, 11th July, 1825.

REPORT, &c.

The Committee on Laws, to whom were referred their Report, presented to the Common Council on the 11th of May last, on the subject of Interments, and also a resolution proposed by Alderman Ireland on the same day, on the same subject, and the accompanying documents, with instructions to express an opinion upon the matters so referred to them, and that they make an amended Report at the (then) next meeting of the Common Council:—

REPORT,

THAT the ordinance respecting the interment of the dead, was passed on the 31st of March, 1823, after several modifications of the plan as originally reported, and after much discussion and deliberation upon the principles on which it is founded, and the provisions which it contains. The Committee to whom the subject had been referred, consisting of the then and now Recorder, Alderman Mead, Alderman Wyckoff, and Alderman Ireland, and Mr. Assistant Thorne, reported in the first instance the draft of an ordinance consisting of four distinct provisions: the first prohibiting the use of Graves, the second prohibiting the use of Vaults, excepting family Vaults, the third prohibiting the construction of any additional Vaults to the south of Grand-street, and the fourth prescribing certain regulations as to the opening and use of Vaults. This Report was for some reason, referred back to that Committee, who on a re-examination of it, struck out the second section altogether, and reported it to the Board thus altered. Upon the coming in of this Report, one of the present Committee, believing that to omit the second section, would be to legislate only against a fraction of the evil arising from interments, after the passing of the first section, moved for the reading and passage of the second section as originally reported. On this motion being made, another was brought forward, by another member, to strike out from the second section, the privilege of using private Vaults. On the

consideration of this amendment, a very interesting and trying debate ensued, respecting the nature and extent of the claims of the owners of private or family Vaults, and the difficulty of allowing to them the exclusive privilege contemplated in the second section. The exception in favour of private owners, was, on full consideration, stricken out, and the section passed as thus amended. And as in consequence of this, the provisions of the third and fourth sections became useless, they were stricken out.

The Committee deem it proper to call the attention of the Common Council, to the important fact, that this ordinance was passed, after the melancholy and deplorable effects experienced by our citizens from a visitation of Yellow Fever in the summer and fall of the year 1822—that this dreadful disease originated in the immediate vicinity of one of the oldest and largest burial places in our city, the Trinity Church Yard—and that much apprehension was felt by the inhabitants of danger, from a like visitation from the same neighbourhood, on account of the saturated state of that ground by human remains, and the obviously indiscreet and improper measure on the part of the vestry of that Church, in causing to be made several new and very large public Vaults in that same Church Yard. And the Committee beg leave to add, that the Law authorising this ordinance of the Common Council now under consideration, was passed by the Legislature in the session of 1806 after the severe and lamentable effects of the Yellow Fever, in the summer and fall of 1805, upon the application of the Board of Health, and on their representation of the dangers arising from the practice of interments to the public health of this City.

The ordinance as amended having passed, went into operation, and the Committee have no hesitation in stating that it has met with the general assent and approbation of the community, and that it received the public support, as well on account of the necessity of guarding against the cause of disease and death arising from Interments, as from the universality and freedom from all exception, of its provisions, as to the persons and families upon whom it was to operate. That it has met with

this general approbation and support on the part of the people at large, of public writers, with few and unimportant exceptions, and of the only Court of Justice before which it has been brought under discussion, are matters of notoriety upon which the Committee need not dwell. That such a regulation must at some time be adopted is generally, if not universally, conceded. And your Committee take it to be a point equally clear, and having the like general assent in its favour, that the practice of Interment within the limits of the dense population of a city, is injurious to the public health, otherwise, why prohibit interments in graves, which is done by the unanimous consent of all parties; or why prohibit the construction of new Vaults, in which respect there is a like unanimity; or why prohibit the use of public Vaults, which has the acknowledged majority of opinions on its side; or why indeed legislate at all upon the subject and against the *practice of Interment*, as one among the system of measures necessary for internal precaution and safety, unless in some form or other, it has a bearing on the infinitely interesting consideration of the public health? There can in the opinion of your Committee, be but one clear, candid, and unequivocal answer to this range of inquiry, and that is, that the practice of interring the dead within the thickly inhabited portion of our City, in all its branches, and in every form, is injurious to the living. If this be so, why procrastinate the remedy so obviously within the comprehension of the meanest capacity, and within the reach no less of the citizens, than of the public authority? Our city is progressing in all the essential particulars that are to constitute its future greatness, and with that progress, a wise and prudent government ought to be studious to identify every measure of policy and foresight, that can insure to ourselves, the numerous emigrants that are seeking an abode and settlement among us, and to that posterity, whose dearest interest are confided to our hands, the invaluable objects of security to their health and lives, against the ravages of pestilence or epidemic disease in any form, no less, than the enjoyment of civil and religious liberty, and the other blessings of life.

In support of the law relating to Interments, your Commit-

tee will now beg leave to introduce first, such examples from the records of History; and secondly, such authenticated facts and circumstances, as in their opinion are calculated to vindicate and recommend it, and indeed to obviate every objection that can be raised against its provisions.

First. Among the Jews, the general custom seems to have been, that the dead should be buried without the city. The proofs of this are to be inferred from the instances of Abraham, who purchased at Hebron, the cave of Machpelah, which was in a field for a burying place, that, in the emphatic language of the Scripture, he might bury his dead out of his sight, and in which his wife, himself, and Isaac and Jacob were afterwards buried. The body of Joseph was buried in a plot of ground in Shechem. Moses was buried in a valley in Moab. Eleazer was buried on a hill. And there are many other instances which are collected by Dr. Rees, in his *Cyclopedia*, title 'burial', where may also be found the proofs of a similar practice among the Egyptians, the Persians, the inhabitants of Greece, Sicily and Asia, and to this day among the Chinese, and many other nations. Among the Romans, the practice of interment without the City prevailed, it appears, before the Law of the Twelve Tables. And by that Law, it was expressly enacted, that no dead body should be buried or burned within the city. And the practice continued among the Jews, until the latter period of their existence as a nation, as appears from the facts that Lazarus was buried at Bethany, a distance from Jerusalem; that Joseph of Arimathea, a man of high standing among the Jews, had his tomb near Golgotha, and which became the sepulchre of our Saviour; that at the crucifixion, those who came to life *returned to the city*. And it is said of the demoniac, of whom the evangelists speak, that having broken his chains, *he fled into the desert and dwelt among the tombs*. The Greeks also observed the same practice: Solon adopted it among his regulations, and at Athens, until the latter period of the republic, there was only a small number of persons interred within the walls. At Syracuse, the tombs were without the walls, for the burial of the inhabitants.

In Gregory's Dictionary of Arts, Vol. 1, title 'burial,' it is stated that "the place of burial among the Jews was never particularly determined. We find they had graves in the town and country, upon the highways, in gardens, and upon mountains. Among the Greeks, the temples were made repositories for the dead, in the primitive ages; yet the general custom in the latter ages with them, as well as with the Romans, and other heathen nations, was to bury their dead *without the cities*, and chiefly by the highways. Among the primitive Christians, burying in cities was not allowed for the first 300 years, nor in churches for many ages after; the dead bodies being first deposited in the atrium or church yard, and porches or porticoes of the church: hereditary burying places were forbidden till the twelfth century."

The Law of the Twelve Tables of Rome, has already been cited, and is a faithful transcript from the original. It is to be found in the tenth Table of that venerable collection, and is the first in that Table. In addition to that Law, that no dead body should be buried or burned within the city, it is decreed by the twelfth Law of the same Table, "that no sepulchre shall be built or funeral pile raised *within sixty feet of any house*, without the consent of the owner of the House.—See Cooper's *Justinian*, 662, 663. This Law of the Twelve Tables against interment in the city, was enacted by the Decemviri in the year before Christ 451, was incorporated in the laws of the succeeding forms of government, was extended and became in force over the whole empire, and continued until the time of Pope Gregory the 1st, or the great, which was A. D. 596, making a period of 1047 years. The Christian Emperors in re-enacting this Law, believed that burial was invented not for the sake of the dead but of the living, and the text of the Law requiring that interments should be without the city to preserve the sanctity (*sanctitatem*) of the residence of the living, was altered so as to read, that they should be removed to preserve the health (*sanitatem*) of the citizens, that is, lest the dead bodies should infect the city with pestiferous exhalations, or the noisomeness of the dead interfere with the health of the living.

To this Law the exceptions were very few and rare. Vestals, Generals who had received the honours of a triumph, and Priests, (as innovations began to take place,) were allowed to be buried within the city. Yet the Cesars, who after Augustus were honoured with an apotheosis, were not allowed this distinction, and were buried outside the walls of Rome—and accordingly Domitian was transported to the Latian Way, Septimius Severus to the Appian, and another Emperor to the Lavinian. And it will scarcely be contended by any class or portion of our citizens, that any such exceptions as have been mentioned, ought to be made among us, nor can it be believed that they would be sanctioned by public opinion, in any law by what power soever it might be enacted. The Females of our country however exemplary, our Generals however victorious or patriotic, and our Clergymen however distinguished for their piety, cannot wish, nor can their best friends and admirers wish, that any distinction should await them like the privilege that was granted to the Vestals, the Generals, or the Priests of Rome. How and when, and under what circumstances this Law came to be changed, is thus accounted for by all distinguished writers, and particularly by Mr. Justice Abney, of the English Common Pleas, of whom Sir Michael Foster says in his Essay upon the Crown Law, page 75, that “he was learned in his profession, and of great integrity.” The extract now made is from the opinion of Justice Abney, Willes’s Reports 537. “Now it is most notorious and certain, that all burials by the Roman Law, were prohibited not only within the temples, but even in cities and large towns, and by the very words of the Law of the Twelve Tables. “*Hominem mortuum intra urbem ne sepelire.*” And this prohibition was founded on a prudent state policy to prevent infection, from the great number of corrupt corpses lying contiguous in putrefaction; and it is well known, that the poorer sorts in great parts of the kingdom, are buried in shrouds, without coffins to this day.”

“But when Popery grew to its heighth, and blind superstition had weakened and enervated the laity, and emboldened the Clergy to pillage the Laity, then in the time of Pope Gregory

the 1st, and soon after other canons were made, that Bishops, Abbots, Priests and faithful laymen were permitted the honour of burial in the church itself; and all other parishoners in the church yard, on a pretence that their relations and friends on the frequent view of their sepulchres, would be moved to pray for the good of the departed souls.

“And as the parish Priest was, by the Canon Law, sole judge of the merits of the dead and the fitness of burial in the church, and he would only determine who was a faithful layman, they only were judged faithful whose executor came up to the price of the Priest, and they only were allowed burial in the church, and the poorer sort were buried in the church yard.”

To the account which Dr. Rees gives of the innovation of Pope Gregory, which agrees in substance with the above, he adds, that Gregory’s reason was, in the monkish ages, used as an epitaph, and inscribed on the sepulchres,

“^{pro}Orate anima miserrimi peccatoris.”

Pray for the soul of a most miserable sinner;

and that it was transcribed into the body of the Canon Law. And that to this superstition, and the profit arising from it, we may ascribe the original of church yards. The practice of the Romish Church, as introduced by Gregory, was brought to England by Cuthbert, Archbishop of Canterbury, about A. D. 750, and the practice of erecting Vaults in chancels, and under altars, was begun by Lanfrac, Archbishop of Canterbury, about A. D. 1075. And Docter Rees further states, that the primitive Christians did not allow of burials in cities, for the first 300 years, nor in churches, until many years after.

From these historical relations, which however are by no means as extensive as the subject, and the researches of your Committee would justify, it appears that the prohibition of the practice of Interment in cities, in those ancient nations, was general, and that in the language of the authors referred to by your Committee, the exceptions were both ‘few and rare,’ until the abuse became general, through the influence of Pope Gregory.

Your Committee will now draw the attention of the Common Council, to three prominent and striking instances of the pro-

hibition of the practice of Interments, in the city of Toulouse, by the Archbishop of that diocese—in Paris, by the Parliament of that city—and finally in all the cities and towns of France, by the decree of Louis XV. From the ordinance of the Archbishop of Toulouse, passed shortly before the commencement of our revolutionary war, your Committee present the following literal extracts. “Believe not, dearly beloved brethren, that our solicitude and anxious care for the public health, is the only motive that induces us to break silence.

“To the instinct of self-preservation, which calls loudly for a reformation of the present system of burial, we may add the commands of God, which direct us to be careful of our lives, that we may serve him and prepare for a happy eternity; and the orders of the church, which have always reprobated, as a profanation, the general admission of the dead within consecrated walls, and in places held sacred. May our subsequent details and remarks enlighten your piety without enfeebling it; and without impairing the respect due to the memory of the dead, confound that inconsistent vanity, which follows them even to the grave.

“These principles naturally lead us to ascertain what place, then, should be appropriated to the disposal of our departed brethren. *The custom of praying for them, probably induced the early Christians to deposit them near each other in the same ground: this was the origin of cemeteries.* St. Chrysostom informs us, that cemeteries were not permitted in cities, because the presence or vicinity of the dead would not only contaminate pure air, but incommode the inhabitants by the stench they would occasion. *Nullum in civitate sepulchrum struitur.* If such is the privilege of cities, how evident is it, that a Church has a right to exclude interments from within her walls.

“In the Council of Brague burials in Churches were forbidden, and the House of God was decreed to be open only to the relics of Saints and Martyrs. Constantine himself, to whom the Church was so much indebted and so grateful, asked no higher favour than to be buried under the portico of the Church of the Holy Apostles.

"Such," he remarks, "was the primitive discipline in relation to interments;" and, he adds, (and in presenting what follows of the sentence, the Committee cannot but ask the Common Council to observe and admire the foresight and caution of this learned prelate)—"what is more interesting in this statement, dearly beloved brethren, is, that legitimate exceptions have been made as precedents for its infringement, for true it is, that the slightest compromise of a law leads finally to its destruction, or total violation.

"If inhumation around churches is to be allowed, can cities be perfectly salubrious? If laymen and priests, distinguished for piety, are to be buried in them, who shall judge of their piety, or who presume to refuse their testimony? If the quality of founder or of benefactor is a title, what rate shall fix the privilege? If the right is hereditary, must not time multiply the evil to excess, and will not our churches at length be crowded, as now, beyond endurance? If distinctions are to be procured for money, will not vanity lavish riches to procure them? We are disposed to show all possible moderation in this necessary reform, but woe to us, if, blinded by weakness, we lose sight of the experience of past ages, and suffer things still to continue, that have till now served, and can only serve, to perpetuate this disorder. The civil law could not but agree on this point with our religious canons, because the preservation of the lives of the community, is a duty of the first magnitude, and it suffices to enter our churches, to be convinced of the baneful effects of the foetid exhalations in them."

After illustrating the folly, as well as danger, of the practice against which the ordinance is pointed, in a variety of ways, and remarking in a most decided and at the same time, affectionate manner, that "exceptions are odious, and multiply pretences and objections—that none will dare to complain when the law is general—and that no law can more justly be general than one that relates to the grave," he thus addresses his brethren:—"Ye whom the vows of the cloister have united under the yoke of the Lord! will you object to the retrenchment of your funds

that this ordinance must produce! no, for you wish not to support existence at the expense of the lives of others.

“ You yourselves would blame us, if rather than deprive you of a source of revenue, we were to authorize your chapels to continue, or to become centres of infection and death.” He then observes—“ We have investigated and examined the requests of our venerable chapter; the petitions from various parts of our diocese; the *Proces Verbaux* of the inspection of many parishes, and, finally, the reports and opinions of physicians on the pernicious consequences of this custom, and therefore have enacted,” &c.

Then follow the provisions of the ordinance against interment in the city of Toulouse, which were sanctioned the following year by the parliament of France, and the king; and this prelate was shortly afterwards made cardinal by Pope Pius VI.

In the preamble to the decree of the parliament of Paris, it is asserted “ that daily complaints are made on the infectious effects of the parish cemeteries, especially when the heats of summer have increased the exhalations; then the air is so corrupted that provisions will only keep for a few hours in the neighbouring houses, which proceeds either from the soil being so completely saturated, that it cannot retain or absorb any longer the putrescent dissolution, or from the too circumscribed extent of the ground for the number of the dead annually interred.”

In this decree, your Committee would remark there was an exception; that for the sum of 2000 livres, a body might be consigned to a family vault in a church, if the coffins were of lead; and high ecclesiastics might have their burial in the same manner.

It was thought that the great and populous capital of France, would, by this decree, be sufficiently protected against the dangers of cemeteries and vaults.

But soon afterwards, in 1774, a further decree became necessary, which recites—“ that reasons exist against the re-opening of vaults, the fatal consequences of which demand a general law to be put in force against all interments in churches whatsoever. This court will reinstate the ancient discipline of the church,

and give a new sanction to the rescripts of those sovereigns, who maintained it by their authority. The temples will then resume the decency and order of appearance, which they cannot display while the opening of vaults is permitted; they will also be freed from the fœtid smells, which render the air in them insalubrious, and which are, perhaps, the principal cause of the distressing epidemics that have appeared in the provinces.

“Medical men assure us, that the vapours, exhaling from putrefaction, fill the air with chemical compounds dangerous to health, and productive of malignant diseases.

“We know that this decree is against the wishes of a certain class, who found claims upon a possession in itself an abuse; or upon titles *acquired by means of a small sum*, which they imagine entail an hereditary right to burial within a church; *as if possession were a right superiour to justice, or that a prescriptive indulgence should be continued in despite of its injury to the public good; or that a certain sum of money were an equivalent for the health and lives of their fellow citizens.*”

The king took a still more active part, soon after, by a royal declaration, which recites that “the archbishops, bishops, and other ecclesiastics, in council assembled last year, in our good city of Paris, have represented to us that, for many years, complaints have been made to them from different parts of their respective diocesses, on the frequent inhumations in churches, and also on the actual situation of the cemeteries, which are too near the said churches, and might be placed more advantageously, if removed to a distance *from cities, towns, and villages*, in the several provinces of our kingdom. We have given to these representations more attention, because informed that our magistrates are convinced of the necessity of a reform in this part of the public police, and have long desired suitable laws, in union with the rules of the church, to provide *for the purity of the air*, without infringing, if possible, upon the rights of archbishops, bishops, curates, pastors, lords, founders, &c., in the churches of our kingdom: these wishes having reached us, we think it unnecessary to defer any longer making known our intentions, and we are persuaded that our subjects will receive

with gratitude a regulation dictated by our zeal for their preservation.

The articles, which then follow, *prohibit grave-yards in cities or towns*, of which the archbishop of Toulouse had already given an example in his diocese, and they permit no interment in churches, chapels, or cloisters, but for *such persons* as have been already mentioned; and ordain besides, that *even these* shall not be interred except under vaults covering a space of 72 square feet, built of stone, and flagged; *the bodies to be placed six feet deep in the earth, under the lower pavement of the vault.*

Your Committee beg leave to introduce the following extracts from the "*Dictionnaire des Sciences Medicales*," a work edited and conducted by a society of physicians and surgeons, printed in Paris, in 1818, as confirmatory of some of the foregoing statements, and at least as having a connexion with the subject of this Report in general:—

"All nations have perceived the necessity of giving sepulture to the dead—either to avoid the sight of a dreadful spectacle, to preserve the body from the voracity of furious beasts, or in fine, *to prevent those dreadful maladies, which the putrifaction of a dead body infallibly produces when left without any precautions among the living.*"—INHUMATION. Vol. vi—p. 156.

"It is at this day well known, and has been satisfactorily demonstrated, *that burials in cities greatly endanger the public health*; that the miasmata disengaged from burial places, may, and often have, caused frightful catastrophies, and that they not only give more virulence to prevailing maladies, but also originate contagious diseases, whose ravages have been terrible.

"Since the year 1776, all interments in cities and churches have been forbidden (in France) And that important measure of police has been observed with so much rigour, that in 1810 an archbishop of Aix solicited in vain from government the favour of being buried in his own cathedral church.

"We hope that that prudent severity will never be relaxed. *One exception would speedily restore the former abuses.*"—Vol. vi. page 191.

UPON THE SITUATION OF GRAVE-YARDS.

"There must necessarily be a great many cemeteries for a large city; they should be situated, as far as localities will permit, on an elevated place—at a considerable distance from the city, and to the north of the dwelling houses—so that the south wind should not pass over them after being charged with emanations from the grave-yards.

"The tombs of the *Chinese* are erected *out of their cities*, and almost always upon hills covered with pines and cypress. One sees at a distance of a league, little villages, hamlets, scattered houses surrounded with trees, eminences surrounded by walls generally in the form of a horse-shoe—these are so many cemeteries. The poor cover the coffin with earth about six or seven feet high in the form of a pyramid—the great construct vaults to enclose the coffin, and raise over it a mound of earth in the form of a bonnet about twelve feet high and eight or ten in breadth, and plastered over with mortar to resist the action of the rains"

Your Committee will only add, under this head, that in *Denmark*, *Venice*, *Constantinople*, *Prague*, *Vienna*, and in many other places in Continental Europe—in *Lima* in South America—in *Port au Prince*—in the island of *Ceylon*—in *Greenland*—among the *Hottentots*—and also among the *Indians*, in North America, as they are informed, the practice of interment in cities, and in the neighbourhood of their villages, is prohibited.

That in *Dublin* the same prohibition exists, and was enacted in or about 1740, after a pestilential fever in that year, and the place of interment for the inhabitants is in the neighbourhood of the river Liffey, at a distance from the city.

'That in 1814, the commissioners of improvements reported to Parliament, that St. Margaret's church yard in *Westminster*, could not *with safety to the public health*, be used any longer for burying.

That in *Liverpool*, which has a population but a little exceeding that of New-York, a new cemetery called the "*Low Hill General Cemetery*," has been recently established by a number of persons of various religious faith and persuasions, with a

view of altering the custom that has hitherto prevailed, of interring the dead amidst a dense population.

That it is said by Lord Stowell in his judgment in the iron coffin case, that “the church yards in *London* cannot be made commensurate to the demands of a large and increasing population. The period of decay and dissolution, does not arrive fast enough in the accustomed mode of depositing bodies in the earth, to evacuate the ground for succeeding claimants.”

And in other publications it is said, that a number of individuals have projected a scheme for constructing a receptacle of the dead, on a large scale in the vicinity of London, and to give it the name of *Necropolis*, or “city of the dead.”

Your Committee will here introduce a note from Preston’s description of St. Paul’s Church in London.

“In 1707, Sir Christopher Wren, the architect of St. Paul’s Cathedral, in a letter addressed to a joint commissioner with himself for building fifty churches in addition to others already built, to supply the place of those destroyed by the conflagration in 1666, observes—“*I could wish that all burials in churches should be disallowed*, which is not only unwholesome, but the pavements can never be kept even, nor pews upright; and if the church-yard is close about the church, this also, is inconvenient. It will be enquired—where then shall be the burials? I answer, in cemeteries seated in the outskirts of the town.”

In other publications, the celebrated burial ground of the *Pere La Chaise*, near Paris is thus described. “It is a spot just without the walls, where the ashes of Jew and Christian, Catholic and Protestant, repose in charitable vicinity. The ground is laid out with taste and elegance, diversified in position, beautified with shrubs and flowers, and appropriately adorned with monuments, some interesting from their historical recollections, some touching from the simplicity and tenderness of their inscriptions, all neat, decent, and appropriate to the solemnity of the scene.”

In connexion with this historical branch of the subject, the Committee beg leave here to introduce some few instances of similar regulations in our own country, for separating according

to the course of nature, and dividing the empires of the living and the dead.

Of the cemetery at New-Haven, the late Rev. Dr. Dwight thus writes :—

“The original settlers of New-Haven, buried their dead in a church yard. Their church was erected on the green or public square ; and the yard laid out immediately behind it. While the Romish apprehension concerning consecrated burial places, and the advantages supposed at the resurrection to attend those who are interred in them, remained, this location of burial grounds, seems to have been not unnatural.

“But since this apprehension has been perceived by common sense, to be groundless and ridiculous, the impropriety of such a location forces itself upon every mind.

“It is always desirable that a burial ground should be a solemn object to man ; because in this manner it easily becomes a source of useful instruction and desirable impressions.

“But when placed in the centre of a town, in the current of daily intercourse, it is rendered too familiar to the eye, to have any beneficial effect on the heart.

“From its proper, venerable character, it is degraded into a mere common object ; and speedily loses all its connexion with the invisible world, in a gross and vulgar union with the ordinary business of life.” The distinguished writer, after noticing the other disadvantages of this ground, describes the new ground, which is at a distance from the city, in a minute and lucid manner, and remarks, that “it is incomparably more solemn and impressive than any spot of the same kind within my knowledge ; and, if I am to credit the declarations of others, within theirs.

“An exquisite taste for propriety, is discovered in every thing belonging to it ; exhibiting a regard for the dead, reverential but not ostentatious, and fitted to influence the views and feelings of succeeding generations.

“At the same time, it precludes the use of vaults, by taking away every inducement to build them.

“Those melancholy and disgusting mansions seem not to

have been dictated by nature ; and are certainly not approved by good sense. Their salubrity is questionable ; and the impression left by them on the mind transcends the bounds of mourning and sorrow, and borders at least on loathing."

After some further remarks, Doctor Dwight concludes by remarking, that as he believes, " the completion of this cemetery will extensively diffuse a new sense of propriety in disposing of the remains of the deceased "

Your Committee will only detain the board with two or three more instances in our own country.

The one is the city of Albany, the seat of government of our state, in which interments have for several years, been directed to be at a distance from the dense population. Another is in the city of Washington, the capital of our country. With regard to which, a writer in the " National Journal " of the 17th of May last, thus speaks, " our burying grounds lie at some distance from the city, yet they bear testimony of the frequent visits which are made to them, by affectionate survivors, in the flowers which are to be oftentimes seen scattered over the silent mansions of the dead, and the solitary rose-tree, casting its fragrant and beautiful blossoms on the turf, an annual tribute to the memory of those who rest beneath." And the town of Brooklyn, in King's County, lying in view of our city, in consequence of our example, has recently purchased a small farm on the east side of the Wallabout, and apportioned part of the same among the different religious denominations, worshipping in that town, and also a public burying place, and have entirely ceased interring in the Potter's Field within the bounds of the village.

In the conclusion of this branch of their Report, your Committee must be permitted to reiterate a remark already made, that the prohibition of the practice of interment in cities, as far as the researches of your Committee have extended, has been general, and has been proposed, and acted upon as one entire branch or system, without any such discrimination, as is now claimed by some of our citizens, and that from the scope and current of sacred and profane history, and from a fair examina-

tion of facts depending upon historical evidence, any exception will be found to be unsupported, and altogether without authority.

Second. In entering upon the remaining branch of their inquiries, namely, that which relates to the safety or injurious nature of the practice in question, your Committee are at some loss to determine how to select the proper facts and circumstances, from the mass that is before them, and how to arrange them in due and proper order, from a want of professional skill, in this department of knowledge. They will however give the fair result of their inquiries, in the best manner in their power; and will esteem themselves fortunate, if in place of this qualification, they shall be enabled to substitute plain good sense, as the basis of their classification, and of the conclusions they may draw.

Is the putrefaction of animal matter the cause of disease, is it injurious to the public health, or does it in any manner tend to the shortening of human life? To this interesting inquiry, let us bring our candid attention, and in the face of this reflecting and intelligent community, let us give such an answer as will satisfy the calls of conscience, and contribute to our own individual safety, and that of the countless generations that are to follow us. The city of New-York occupies at this moment an interesting position—may this Common Council, as her representatives, be true and faithful to the high and solemn duties that are imposed on them in the conjuncture !

Putrefaction of animal substances, has been defined to be the decomposition or derangement of their constituent parts. Its effects are sufficiently obvious to sense ; but the *rationale* of the process is involved in considerable obscurity.

The effects however are what principally concern mankind at large.

Doctor Rees in his Cyclopedia, under the head of putrefaction, says, “ the most remarkable changes produced upon a body by putrefaction are upon its colour, smell and taste. Flesh beginning to putrify, is well known to exhale very soon after, a penetrating fetid smell, its colour becomes pale, then blue, afterwards livid and black, and its taste nauseous. As the putrefac-

tion advances, the smell becomes more and more fetid, and it also acquires great pungency, by the disengagement of a large quantity of volatile alkali. Solid bodies whilst they are putrefying, swell, become soft, lose the cohesion of their parts, and are lastly reduced to a very disagreeable putrid pulpy mass; the fluids become turbid; the effluvia loathsome and sickening; and after a time, a putrid gas is disengaged in a slow but sensible effervescence. A foul and brown serum then sweats out from the pulpy mass, and about this time the effluvia is very sensibly ammoniacal, which is indicated by its effects on the eyes and throat. For some time a large part of the putrid substance is evaporated and carried off in the putrid gas, and dispersed in the atmosphere, after which the extreme fetor subsides, and finally the process subsides, and leaves a kind of fat, fetid, earthy matter.

“The gases or some of them must be considerably changed by the solution of the animal matter, or some compound but not yet examined, must be produced, when the gas evolved occasions such dreadful effects upon those who have the misfortune to fall in the way of it, even when diluted considerably with common air.

“This is said to be the case when the abdomen of a large animal is first burst, after putrefaction; the gas from which causes instant fainting, and sometimes death, and even when the person exposed to it receives the first shock, it leaves excessive debility, and other alarming symptoms for a considerable time.

“As to the cause and process of putrefaction it has been generally believed that the contact of atmospherical air is necessary for this purpose, and that bodies become putrid, because air communicates somewhat to them. But on this point the learned disagree, for it is said by others, that putrefaction is accelerated by taking off the pressure of the atmosphere, and that the putrefaction of meat and other substances advances quicker in a confined, than free air; for as the most putrid parts are the most fugitive, they incessantly issue from a corruptible substance, and disperse with the wind, but in a stagnation of air,

they remain about the body, and excite its corruption. Air of various kinds is produced by putrefaction."

Doctor Rees under the same head continues : " We shall here subjoin some observations with respect to the decomposition of animal bodies *that are interred in burying grounds*. In this situation, the decomposition is sometimes as slow, as when the putrifying animal is exposed to the air. It is not perfectly ended, till three years after the body has been interred, at the depth of four feet, and it is slower in proportion as the body is buried at a greater depth.

" The several principles of bodies are dispersed through a great space imbibed by the roots of vegetables, and gradually decomposed.

" This is what passes in burying grounds in the open air ; but it is very far from being applicable to the sepulchres, which are made in churches and covered places. Here is neither water nor vegetation, and consequently no cause which can carry away, dissolve, or change the nature of the animal fluids ; and we cannot but applaud the wisdom of government, which has prohibited the burying in churches, a practice which was once a subject of horror and infection.

" The accidents which have happened at the opening of graves and vaults, are but too numerous to render an apology necessary for our speaking a few words respecting the method of preventing them.

" The depth of the grave ought to be such that the external air cannot penetrate it. A grave ought not to be opened before the complete decomposition of the body.

" The pernicious custom which allows a single grave to families, more or less numerous, ought therefore to be suppressed, for in this case, the same grave may be opened before the time prescribed.

" These are abuses which ought to occupy the attention of government ; and it is time that the vanity of individuals should be sacrificed to the public safety.

" And it is likewise necessary to prohibit burying in vaults, as thereby the principles of the bodies are spread into the air and infect it.

“If,” continues this author, “these precautions be neglected, unhappy accidents will no doubt be produced, and these accidents are but too common in great towns where very wise precaution is neglected. An instance of this happened when the ground of the church of St. Benoit, at Paris, was dug up a few years ago. A nauseous vapour was emitted, and several of the neighbours were affected by it. The earth which was taken out was unctuous, viscid, and emitted an infectious smell.”

In Dr. Gregory’s Dictionary of Arts, title “Putrefaction,” your Committee find it stated as follows:—“In putrefaction, the abdomen is gradually dilated with elastic fluids, and at last it bursts and discharges a horribly fetid and noxious gas; at the same time, a dark coloured liquid flows out.”

In introducing the quotation now to be noticed, your Committee would do injustice to their own feelings, and to those of their fellow citizens at large, if they should suppress the remark, with regard to its distinguished and lamented author, that he was the ornament of his profession and his country; that in life, he deserved the esteem and respect of the wise and good, and that his memory is cherished by all who knew or have heard of him, with unqualified affection and veneration.

Dr. Edward Miller, as is well remembered, was, for several years, the resident physician of this city. In 1806, he published, in the form of a letter addressed to His Excellency Morgan Lewis, then Governor of this State, a report of the malignant fever, which prevailed in this city, in the summer and autumn preceding. This report was, soon after its appearance, reprinted in Great Britain, and translated and published, with distinguished approbation, in the French, German, and Spanish languages.

In the conclusion of this most able medical paper, in treating of the origin of this terrible calamity, Dr. Miller remarks that “the source of this disease forms a most interesting subject of inquiry; and after a long and careful investigation of the subject, I cannot hesitate to conclude, that a pernicious exhalation or vapour, floating in the atmosphere, is the primary and essential cause of this disease. To produce this vapour,

there must be a concurrence of heat, moisture, and a quantity of decaying animal and vegetable matter. It is therefore exhaled, by heat, from low and moist grounds overspread with the corrupting offals of animal and vegetable substances—from such substances collected in large masses—or from any place where the process of putrefaction is going on to considerable extent.”

Dr. Miller was not more assiduous in discovering and pointing out the causes of this dreadful malady, in the investigation of which, his active and polished mind has left behind him the most lasting testimonials of his learning, public spirit, and devotion to the cause of truth—than he was in suggesting what he deemed advisable towards the removal of nuisances, and the improvement of the salubrity of the city. This he had done in his letter to His Excellency Governor Clinton, after the epidemic in 1803. He accordingly confines his attention, in this letter, to a few of the most prominent and obvious sources of improvement, among which he enumerates the following as of the most urgent and immediate necessity, to wit :—“ *Water*, obtained from a distant source, of pure quality, and in quantity sufficient to allow a constant, plentiful, and increasing expenditure ; *sewers*, of such number, capacity, and construction, as completely to drain all the low and marshy districts, to carry away all filth, and to be constantly washed by a brisk current of water ; a new arrangement and construction of *wharves*, *docks*, &c., so as to face the margin of the two rivers with a stone quay, impervious to water ; a prohibition to make a single foot of *artificial ground* ; a different modification of *privies*, which are every day becoming more and more an alarming nuisance ; a better plan of *paving*, particularly as respects the construction of gutters, &c. ; the draining of all *stagnant waters* in the town and neighbourhood ; the filling up all *low lots and places*, and a *prohibition to inter dead bodies in any part of the city*.”

In another medical paper of this accomplished physician, made public since his death, speaking of the putrefaction of the human body, he says—“ in this process the flesh absorbs moisture, and while one part of it escapes in *pestilential exhalation*,

the remaining part falls down into a putrid liquid mass:" thus agreeing with the evidence, before given, from the most approved sources.

After the epidemic fever, which prevailed in this city in the summer and fall of 1795, Dr. Richard Bayley, afterwards health officer, published an account of its ravages. Annexed to this publication, is a physical inquiry into the origin and causes of pestilential fevers, addressed to the Hon. Richard Varick, Esq. then Mayor of this city, by an author whose name is not given, but from which, under the above circumstances, your Committee submit the following extract.

"The warmth of the earth is what causes all vegetable and animal substances, deposited therein, to putrefy. In consequence, the water, issuing from such contaminated earth, must also become impure, defiled, and unwholesome—but man, living constantly in that impure air, and drinking such water, becomes inured thereto in some measure—yet it may be the occasion of his earlier death, by other means than pestilence, though the actual cause is from the same source."

In this extract, if there is not much learning, there is, in the opinion of your Committee, much good sense—since, as is said by others, "the qualities of the atmosphere depend upon a prodigious number of causes, which render it more or less pure, or the reverse."

From the best authors your Committee have been able to consult, and the observations and facts they have collected, it appears satisfactorily in general, that the air, if charged with putrid emanations, becomes necessarily noxious, and that diseases of the most dreadful kind are frequently the consequences; and that among the causes of these putrid emanations, there is none more productive, or appalling than the remains of dead bodies.

Your Committee had intended to proceed with a specified enumeration of particular instances under this head, with which medical books and experience have furnished them. But they must content themselves with referring the Common Council and recommending their attention to an Essay on the danger of

interments in cities, by Scipion Piattoli of Italy, translated by Vicq. D'Azyr, a physician of eminence, into the French language, and into the English language in the year 1822, at the request of the Board of Health, and which your Committee consider as a most valuable publication, from the attention they have paid to it, as well as from the commendations it has received in the "*Dictionnaire Des Sciences Medicales*" before referred to, in which it is spoken of "as an excellent work."

Your Committee will now call the attention of this Board to three publications in our own country, which may awaken our sensibilities and painful recollections—but the cause of truth and justice requires, that the records of the past should be looked into, and examined with anxious attention, when such a cause is at stake as the public health.

The first is an extract from a work entitled "*Considerations on the unhealthy condition of the city of New-Orleans*," by Dr. J. M. Picornel, published in that city, and also in Paris in 1823. "Another source of disease (says the author) in that city deserves the greatest attention; it is a grave-yard, now adjoining it, and much too small for its population, considering how greatly it contributes to the distressing mortality of its inhabitants.

"Let us discharge towards all our parents, friends, and fellow citizens, all possible testimonies of respect that are commanded by nature and by religion; but let us also guard their survivors against the terrible and irremediable effects that must arise from animal putrid bodies exposed to the influence of heat and moisture.

"All the world acknowledges it to be demonstrated, that the miasmata arising from places of interment, may cause, and have caused the most distressing calamities. They not only give more intensity to the existing epidemics, but they bring forth other contagious diseases, which are equally calamitous."

The next piece of testimony, which your Committee have discovered in the course of their inquiries, and which they do not hesitate to put forward as one of great weight and authority, is "an inquiry into, and observations upon, the causes of the epidemic disease which raged in Philadelphia" in the sum-

mer and fall of 1793, by Jean Deveze, then surgeon and physician of the Military Hospital, established by the French Republic at Philadelphia, and now one of the physicians to the King of France.

At page 38 of his book he says, "among the particular causes (of the disease referred to,) *we may reckon burying grounds, in the midst of the city.* Those places of interment are injurious from the vapours which exhale from them, and corrupt the atmosphere ; and also by the miasmata, which the rain water carries with it as it filters through the earth, and passes into wells. This water used by the whole city must be pernicious, and should be particularly attended to, if in the end those dangers are to be avoided, which result from it." At page 136 and onward, he observes, "there is another cause, which in my opinion, acts infinitely more on the animal economy, (than other causes he had been describing,) the prodigious number of burial places in the heart of the city. The vapours continually attracted from those sources of corruption by the sun, infect the air, whilst the rain penetrating, washes in the graves the putrid remains of the bodies, and carries with it into the wells detached, infected particles, from which it could not be disengaged by filtration, in the short space it has to go.

"After this remark, (he continues,) which I can only think of with pain, may not an individual say, before he drinks a glass of water 'I am about to feed upon a being like myself, to swallow particles from dead bodies, and perhaps those once dear to me, and whom I still regret.' Independent of other inconveniencies from burial places in the city, this reflection, alone, is surely sufficient to determine upon following the example of almost all the cities of Europe, where, I repeat, experience has induced them to banish such places, as they are capable of injuring the healthiest constitution and affecting them with the most fatal diseases." And in a note at page 136, he says, "the voice of an enlightened body of men has induced the *French Nation* to banish burial grounds from their cities. Many persons here, pretend they could not at all affect the salubrity of

the city, and advanced as a proof, the disease not being so frequent near those receptacles of the dead, as in other places. If this assertion were true, it could not confute my opinion; however, I do not pretend to say, the cause of the epidemic proceeded from the burial grounds alone, but I declare and maintain the putrid miasmata, which continually exhale, (however deep the grave might be) being mixed with miasmata, proceeding from other causes, must render the city less healthy, and corrupt the air through which it passes; this air thus charged with vapours, might be spread abroad, and affect persons at a distance, whilst those near the cemeteries escaped, from not having come into immediate contact with that air.

“To give full explanation of this assertion, is foreign to my purpose; those already acquainted with the nature and properties of air, will not fail to add to, and feel the force of, my reasoning.”

The next piece of documentary evidence on this subject, and which is entitled, in the opinion of your Committee to the highest consideration, is the “Report of the Committee appointed by the Medical Society of the State of New-York, to inquire into the symptoms, origin, cause, and prevention of the pestilential disease, that prevailed in New-York, during the summer and autumn of 1798.”

From this, your Committee have made, and submit the following extracts:—

“Medical Society, 15th November, 1798.

Resolved, that a committee of three members be appointed by ballot to inquire into the origin, causes, and prevention of the late epidemic; and report to the Society in writing the result of such inquiry. And that Doctors TILLARY, RODGERS, and MITCHELL, be a committee for the above purpose.”

“Medical Society, December 31st, 1798.

“Resolved—That the Report of the committee appointed to inquire into the origin and prevention of the late epidemic, be received, and that the same be printed at the expense of the Society.

JOHN ONDERDONK, Secretary.

Extract from the Report above referred to.

"The daily accumulation of dead bodies in burial grounds, within the city, we are fully persuaded, is another source of noxious vapours. We know too, that it is touching upon a subject where the affections and the prejudices of mankind are extremely interested. The Committee, however, think from the natural consideration of duty and conviction, and supported by the history of other countries, which have severely suffered by the folly of allowing sepulture within the city, that this practice ought to be ranked as no trifling agent in the production of disease."

In the subsequent part of their report, they enumerate under distinct heads, the necessary rules for preventing the disease, relating to sewers, docks, slips, sinks, burying grounds, cellars, &c. The entire article of burying grounds your Committee will transcribe.

"BURYING GROUNDS.

"These caverns of putrefying mortality, should no longer be permitted to remain within the city—but removed as soon as possible to a suitable distance from it. In the opinion of the Committee, this relict of long indulged superstition, within the limits of the city, should be disused and absolutely forbidden by law, and a severe penalty incurred for every violation of it."

And they conclude the report as follows:—

"Upon the whole, the Committee cannot help indulging the hope, that by this feeble attempt, they may be at least so fortunate as to set their fellow-citizens on *thinking* and by that means lay a good foundation for working. And they intreat the magistracy and the people *to be up and stirring* for they may be assured that *the evil is not dead—but sleepeth.*"

Annexed to this report, is a copious extract from the Essay of Mr. Piattoli, and of the Vicq. D'Azyr, before mentioned, from which your Committee extract as follows:—

"At Saulieu in Burgundy, there prevailed a catarrhal epidemic fever of a mild type; and there had been buried in the parish church of St. Saturninus, the carcass of a gross and corpulent

man. Three and twenty days afterwards, a hole was made along side of that wherein he had been buried, to inter a woman who had died in childbed, of the prevailing distemper. From the moment the ground was opened, a very fetid exhalation filled the church, and was perceptible by all who entered it. In letting down the carcass of the woman, the coffin was shaken by the slipping of the rope, and a quantity of corrupted matter ran out, and affected the assistants. Out of one hundred and seventy persons who entered the church, 149 were attacked with a putrid malignant fever, which had some characters of the prevailing cattarrh; though the nature and violence of the symptoms, left no room to doubt, that its peculiar malignity was derived from the infection of the Church.

“It is well worthy of remark, that the wisest princes and prelates, have uniformly opposed interment in cities and churches—but superstition has always risen up in opposition to their laws, and but too frequently prevented their execution. On this point, the people have shown themselves peculiarly prone to transgress, and therefore it becomes a legislature to provide against the repetition of similar offences by energetic and decisive measures.”

In closing the result of their inquiries on the sad effects of epidemic pestilence in our beloved city, your Committee cannot suppress their earnest hope and prayer, that it may never appear again with its terrifying and desolating train, breaking down the tranquillity, and disturbing the repose and happiness of our citizens—and levelling with irresistible potency the pride of human strength and the fairest hopes of society.

Your Committee will now examine the claims of the petitioners, to exemption from the operation of the law, relating to Interments. These are urged upon three principal grounds, 1st of private right, 2nd of the personal gratification it will afford the petitioners and their families, and 3d of medical opinions, that no danger will be the consequence.

First, as to the ground of private right—what is the extent of this claim, and how far will it reach, if the principle on which it rests, be allowed? It is now proposed to extend the exemp-

tion to individual owners strictly, and to them only. But allow that, and will it not follow that two, three or more families may unite in the purchase and ownership of a vault? suppose the case, which is but one of frequent occurrence, that the head of a family dies, leaving several children, each having a family. Is it not plain that all these will have a right by descent to the family vault? And does it not follow that in these and other methods, the right in question may lead to inconvenience and public injury, without the slightest wish or intention of the parties to commit an abuse, by colour of the right? And again, the Committee will not suppose, but state the case known to exist, of churches having public vaults only—and the case of churches to which there are attached both public and private vaults. In the 1st case, is not the claim of private right as well founded in point of moral justice and legal principle, as to those vaults, as it is in the case of individual ownership? If one man owns a house, it is private property. And what is the difference, as to the nature and quality of the estate, if the number of owners of another house, be fifty or one hundred? The Tontine Coffee-House is as much private property as the City Hotel, though the former belongs to many, the latter only to one. And this reasoning is equally applicable to the second case put, of a church having vaults of both descriptions; and in the latter case the claims of the church member, but who is not a vault owner, are equally to be respected. And it is not to be concealed either, that in making the desired discrimination, the Common Council would perform the invidious and painful task of driving one class of citizens and church members from the use of a privilege that is as precious to them, as the same privilege is to their fellow-citizens, and brethren as church members, and who are under the more favourable circumstances, of being vault owners.

And in answer to this claim in all the lights in which it has been, or can be placed, your Committee conceive that a very obvious and conclusive one is to be found in the principle of the common law, "*sic utere tuo, ut alienum non lædas*" so use your own property as not to injure that of another, and in that of the Divine law of the Redeemer, which says, "whatsoever

ye would that men should do unto you, do ye even so unto them: for this is the law and the prophets." In applying these principles, we have only to ask this natural question, whether the good inhabitants of our city, who own vaults ought to wish to incommode those who reside in those vicinities any more, than they would wish to be incommoded themselves, if they resided there, and others were the worshippers and vault owners? And your Committee will subjoin the following clear, explicate extract from a writer, whose authority is not the less, because it is common, and in the hands of every student of the law. The entire section is as follows:—

"Political power or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public. Hence we may collect that the law, which restrains a man from doing mischief to his fellow citizens, though it diminishes the natural, increases the civil liberty of mankind, but that every wanton and causeless restraint of the will of the subject, whether practised by a monarch, a nobility, or popular assembly, is a degree of tyranny; nay, that even laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference, without any good end in view, are regulations destructive of liberty: whereas, if any public advantage can arise from observing such precepts, the control of our private inclinations, in one or two particular points, will conduce to preserve our general freedom in others of more importance, by supporting the state of society, which alone can secure our independence."—BLACKSTONE'S *Com.* vol. i. p. 125.

True it is said by the churches, and so your Committee have stated in their former Report, that the privilege of using the public or church vaults would be dispensed with for the sake of using those of a private description; but your Committee are compelled to remark, that any one step of a retrograde kind, or in the series of accommodation, would lead in its consequences to a relinquishment of the entire regulation—and your Committee have no doubt, from the facts furnished by experi-

ence and history on this and similar subjects, that such would be the inevitable result.

Your Committee will beg leave here to remind the Common Council, that by one of their ordinances, which was passed on January 11, 1808, and which continued in operation until the last revision of the City Laws, it was ordained—

“That no corpse of any person, who may die of any contagious or pestilential disease, other than the small-pox or measles, shall at any time be interred to the southward or westward of Pump and Nicholas Streets, (and afterwards to the southward of Grand Street,) under the penalty of one hundred dollars, to be paid by any person offending in the premises, or assisting therein.”

Now your Committee would ask, whether, in an elementary point of view, private right can be considered as infringed, more in this case than in the one under consideration. The rights of private property do not depend upon adventitious circumstances like those contained in the ordinance just quoted—they are immutable and unchangeable, being regulated only by that great principle, which gives life and stability to the social system, and forms its very foundation, *the public good*: this principle is as universal as it is salutary—whatever is consistent with it is lawful—whatever is in violation of it, is unlawful, according to the spirit and pervading morality of the law.

In further illustration of the doctrine here advanced, your Committee might cite many instances from law books, such as —“If a trade become a nuisance by its situation, it may be restrained by a by-law—and therefore a by-law to restrain butchers and chandlers, and such others from setting up in Cheapside or such other eminent parts of the city, is good, because such trades are offensive and may be apt to create diseases; and therefore, for fear of infection and for the sake of public decorum and conveniency, such kind of offensive trades may be removed to places of more retirement.”—I. Bac. Abr. title, By-Laws—p. 340. 2. Kyd on Corporations, p. 150.

Whether the practice of burying the dead generally, and in all respects, in the midst of a dense population, and in the most thickly settled parts of our city, is, or is not injurious to the

living, and dangerous, in a greater or less degree, to the public safety, and therefore falling within the principle of the above cases, and of the common law itself as applicable to nuisances generally, is a question, which, in the opinion of your Committee, can admit only of an affirmative answer.

But this principle may be further illustrated by the regulation of buildings, within what are called the building limits of our city, by which the owner of a lot of land can only build a house upon it of a particular description, and if he build contrary to that law, the building is declared to be a nuisance, and may be removed as such.—Laws of N. Y. 36 Sess. chap. 86. sec. 63.

The 66th, 67th, 68th, 69th, and 70th sections of the same law, contain various regulations relating to gun powder, and the manner in which it shall be kept, &c.—and for violation of some of these, the Legislature go so far as to say that the article shall be forfeited.

In the succeeding sections will be found other regulations respecting pitch, tar, shingles, &c. In all of which instances, *the injurious or dangerous use of property is prohibited*, and for which, the only reason that can be given is, that the public good is to be promoted, and private rights must yield to its predominating influence.

SECOND. As to the propriety of granting this exemption on the score of gratifying the owners of vaults and their families

In respect to this consideration, weighty and powerful as it is, your Committee have only to oppose to it the more impressive and obligatory one of public duty. And they would very briefly remark, in addition, that laws, in order to command the respectful acquiescence, and prompt obedience of an intelligent community, must be general, and, if possible, universal, in their nature and requirements. A law, partial and limited in its operations, would justly be considered as odious and tyrannical, and would be repealed by any succeeding legislature.

To demonstrate this, as far as our city government is concerned, let us state two or three of the most striking and familiar instances.

The law in relation to cleaning streets, requires that every family in the city, shall, at stated times, perform this necessary duty.

Could a law be maintained, or would it not rather be a subject of public contempt, that should require this of all the inhabitants, except of Hudson Square, Park Place, or Pine Street?

The same remark would apply to the law as to riding at a given rate through the streets.

Suppose there were contained in this law, a toleration in favour of A, B, and C, it would in that case as certainly be violated by all, with the same impunity, as it is now (by the bye) though it contains no exception, and though it is calculated to secure the safety and lives of the men, women, and children of our city.

Take another very striking case : the law in regard to hoisting and lowering goods in the streets, by means of pulleys. The late prompt and equal law on that subject has been respected and observed. If it had contained an exception in favour of any specified number of individuals to have been named, or if it had tolerated the merchants of this, that, or the other street or place to use those machines, while it forbade all others, no such law could, in the opinion of your Committee, have been carried into effect. The law is strong, but justice and equality are stronger still, and in this thinking community, no laws but such as are built on these foundations, will ever be permitted to stand. It will not be forgotten either, by the Common Council, that some of the proprietors of stores with those appendages affixed to them, did contend for an exemption upon the ground of vested rights, that is, that those fixtures had been made before the passage of the law. And it is understood that those persons made application to eminent counsel for their opinion, and your Committee have understood that the answer received from their counsel was unfavourable to their claims. At all events, opposition was abandoned, and the law has gone into quiet and universal operation, upon the basis and consideration, of its tendency to promote the *public good*.

And your Committee cannot help adding, that in none of the historical examples which they have discovered, and cited to this Board, from the days of the decemviri, which was many years before the Christian era, to the present period, has any such exception been incorporated into the multiplied laws, which have been passed in different countries forbidding interment in cities, as is now proposed, except those founded in the mistaken prejudices and superstitions of the times, relating to such persons as vestals, founders and patrons, distinguished generals, ecclesiastics and the like.

Thirdly. The opinions of medical characters.

Your Committee are aware that in approaching this head of inquiry and remark, the duty they have to perform is one of the utmost delicacy, and hazard. Yet trusting to the integrity of their motives, the discernment of this Board, and the candour of the gentlemen of this learned and elevated profession, distinguished as it is, no less by the urbanity and mental accomplishments of its members, than by its relation to, and intimate connexion with the best interests of society,—your committee will proceed to an examination of the medical statements referred to, with the explicitness and freedom, regulated as they hope, by the predominating influence of truth, and of truth alone, as the polar star of their investigation.

That there may be no mistake, and the strictest candour be observed, your Committee will beg leave here to insert the document subscribed by a portion of the physicians of our city, many of whom are of the first rank in their profession, and of course entitled to great weight in the present inquiry. Though the same regard to truth, compels your Committee to add that they are informed and do believe, that many of the physicians of our city of equal respectability with those above referred to, have refused and would refuse if it were proposed to them, to join in the certificate now to be examined. But your Committee will not trouble the Common Council with any numerical calculations on this subject, since the elementary principles of any art or science cannot depend upon the comparison of the numbers of their professors, but upon the self-evidence, or the

nature of those principles, as apprehended by the understanding.

Copy of Certificate.

"Being requested by some of our most respectable citizens, to express our opinions, as to the safety of interments in cities, the subscribers taking into view the facts which long experience has established in many of the largest cities of Great Britain, Italy, and other parts of the continent of Europe, as well as in our own country, are decidedly of the opinion that the practice of Interments in private vaults may be allowed without the least apprehension of danger, either as it regards the origin or the propagation of yellow fever, or any other malignant disease."

David Hosack, M. D.

Wright Post, M. D.

Valentine Mott, M. D.

John W. Francis, M. D.

William Handy, M. D.

J. Smyth Rogers, M. D.

W. M. Ireland, M. R. C. S.

John Watts, Junr. M. D.

John Neilson,

William Barrow,

J. Kearny Rodgers, M. D.

Edward Delafeld, M. D.

Amos G. Hull,

Wm. Hamersley, M. D.

Andrew Hamersley, M. D.

John Onderdonk,

Gerardus A. Cooper, M. D.

Samuel Borrowe, M. D.

Henry M. Van Solingen, M. D.

Thomas Boyd,

J. M. Scott M'Knight,

Abraham T. Hunter, M. D.

Wm. A. Hunter, M. D.

C. C. Yates,

Benjamin Kissam, M. D.

William W. Miner,

Andrew Anderson, M. D.

Joseph Bayley, M. D.

Amaziah Wright,

Nehemiah Brush,

George Hunot,

John See,

Wm. G. Ely

S. R. Ayers,

Benj. Arsdale,

Thomas Jones,

William Rockwell,

Wm. Baldwin,

Henry Palmer,

Richard Vermeule,

William Stillwell,

G. Van Doren,

Abraham L. Cox, M. D.

W. F. Piatt,

Samuel Bradhurst,

James H. Hart, M. D.

Samuel W. Moore, M. D.

Peter C. Tappan,

T. Ludington Smith, M. D.

J. T. Harrison, Health Officer.

John H. Douglass,

Nicholas Jones,

- Benjamin Ogden, M. D.*
David S. Brooks,
James Cockcroft, M. D.
R. H. Maclay, M. D.
Benjamin R. Robson,
Jer. Van Rensselaer, M. D.
Benjamin R. Kissam, M. D.
Daniel W. Kissam, Junr. M. D.
James R. Mauley, M. D.
D. M. Hitchcock, M. D.
Edward G. Ludlow, M. D.
George C. Quackenbos,
John W. Sterling, M. D.
Ebenezer S. Blatchly,
C. R. Gilman, M. D.
Samuel S. Kuypers,
Anthony L. Anderson,
H. McLean,
Jacob Orstrom,
Smith Cutter,
James Demarest, M. D.
N. I. Quackenbos, M. D. Resident J. Hallock,
Physician.
Richard L. Walker, M. D. Health C. Cleeve, M. D.
Commissioner.
James Wilson,
Matthew McIlwain,
Floyd I. Ferris,
John S. Conger,
A. D. Wilson, M. D.
Jotham W. Post, M. D.
Marinus Willett, M. D.
John C. Covel,
D. Quackenbush, M. D.
S. R. Marshall, M. D.
Stephen D. Beekman,
Alex. H. Stevens, M. D.
Corns. Camden Blatchly,
David Rogers,
- Robert Johnston,*
Archibald B. Simpson, M. D.
R. Pennell, M. D.
B. B. Edwards,
Elisha Hallock,
Thos. A. Duffy, M. D.
Hampton Dunham,
R. T. Underhill, M. D.
H. Tomlinson Judson, M. D.
Hudson Kinsley, M. D.
Henry James Anderson, M. D.
Cornelius R. Bogert, M. D.
George Warren Chapman, M. D.
Jeremiah D. Fowler,
David L. Rogers, M. D.
Henry Jones, M. D.
Washington Murray, M. D.
V. R. Ten Broeck, M. D.
Thomas Van Beuren,
Cuspar Wistar Eddy, M. D.
Joseph M. Smith, M. D.
Rudolphus Rouse,
James O. Smith, M. D.
O. Mouroy, M. D.
Frederick Graham,
James Anderson, M. D.
Zeb. W. Seaman,
H. W. Webb,
James L. Phelps,
Daniel Lord,
P. B. Helme, M. D.
A. Van Gelder, M. D.
John Stearns, M. D.
John F. Gray,
Henry M. Francis, M. D.
John R. B. Rodgers, M. D.

I am of opinion that interments in family vaults, (already in existence) if confined to individuals of the family of the proprietor, would not endanger the health of the city.

Cyrus Perkins, M. D.

We concur in opinion with Dr. Perkins.

Stephen Brown, M. D.

John Bell, M. D.

William B. Brown, M. D.

Before examining the separate parts of this communication, your Committee will submit a very few preliminary observations. It has not then been contended at least by the public writers of this city, nor has it been maintained in this Board, that the practice in question is the cause specifically of *Yellow*, or any other fever. The argument is as far as your Committee can understand it, that this is one source of impurity—that collections of an impure nature in a city are the cause of vitiating the atmosphere—a vitiated state of air leads to disease—and disease produces death. Your Committee however do further understand, that the so much dreaded evil of the Yellow Fever is rendered more fatal by an epidemic state of atmosphere, than if that conductor were more pure. And if, as is supposed by many, that alarming disease is of domestic origin, or may sometimes originate among us, then your Committee are free to admit that they cannot apprehend why a grave yard may not be ranked as one of its causes, as well as any other source of impure air, since your Committee believe with the bulk of the authorities they have consulted, that “the *qualities of the atmosphere* depend upon a prodigious number of causes, which render it healthful or injurious.” But of this your Committee will hereafter speak.

First then, our medical fellow citizens refer us to the largest cities of Great Britain in proof of their position.

But your Committee have already stated and now repeat, that in Dublin, according to their best information, persons dying in that City, are buried at a distance out of it, and that no discrimination exists. And that the “Low Hill general Cemetery,” recently established in the neighbourhood of *Liverpool*, and

“the Necropolis,” or City of the Dead, proposed to be established in the vicinity of *London*, are both intended for the dead indiscriminately. The printed accounts of both are at least silent as to any exception.

Second. As to the cities in Italy, your Committee are compelled to differ from the respectable Physicians whose opinions are under consideration, as they have understood from unquestionable sources, and indeed from common report, that in Rome, still the capital of that country, and once the mistress of the world, in arts, and arms, and where the practice of Interment is now tolerated to a degree that must be pronounced horrid and loathsome, there are prevalent the most fatal epidemic diseases, one in particular called the *Mal'aria*, the violence and malignity of which are as much dreaded by the inhabitants, as that scourge of some of our cities, the Yellow Fever.

In confirmation of which, your Committee submit the following extracts from the *North American Review*—New Series—Vol. IX.—January, 1824. These extracts, though long, will be found to be interesting, being the production of one of the most able, and best informed writers of our country.

“In one point of view, indeed, few subjects can be more interesting than the present state of Rome ;—Rome, we mean, considered as a diminished and decaying city, annually consumed by the increasing pestilence of the mal'aria, whose ruins are destined at some period, and, perhaps, at no very remote one, to be left as desolate as the ruins of Paestum or Volterra.—That this is inevitable, has long been admitted with more or less distinctness ; but never shown by any connected notices of the past progress of this mysterious pestilence, compared with its present extent ; for the Romans have seemed to be unwilling to meet the subject in all its alarming magnitude ; and strangers have rarely examined it with interest and thoroughness.

“The mal'aira, or bad air, as it is called, is a state of the atmosphere, or of the soil, or of both, in different parts of Italy, producing in the warm season, and especially in the months of August and September, a fever more or less violent according to the nature of the exposure ; but generally fatal, where the

exposure has been long continued or the place among the more dangerous. It is found in very different situations—situations, indeed, so different, that we can hardly be justified in believing it always to proceed from the same cause. We hear of it in the rice grounds of *Lombardy*, on the high lands near *Padua*, on the summits of the *Radiconi*, and round the Gulf of *Salerno*. But it is no where so formidable as at Rome, for it no where else prevails over a tract of country so extensive, or is followed by consequences indicating so fatal a degree of activity in the cause. The infected district, of which Rome is almost the centre, extends on the coast from *Leghorn* to *Ferracina*, and from the sea back to the *Apennines*, nearly two hundred miles in length, and sometimes above thirty in breadth. How many perish annually from the peculiar disease contracted within these limits, it is not possible to determine; because the persons employed here in cultivating the soil do not live on it permanently, and, as soon as they find themselves infected, endeavour to seek a place in some of the towns, or to return home to be restored or to die. The number, however, is very great. Above 4000 perished by it in the hospitals of Rome alone in 1801, and the yearly list seldom falls below 1300 * Indeed, it is now a settled point, that human life cannot be supported where the mal'aria prevails with a considerable degree of intensity; and those who have survived one season of exposure to it, under such circumstances, are generally its victims, if their poverty forces them a second year within its influence.”—Page 195.

“That the exhalations from such a vast extent of country as this, so long the seat of fatal disease, may, as the vulgar have believed from the time of Pliny to our own days, produce some effect on the atmosphere in the city of Rome, when the wind

* The number of patients received into the Santo Spirito Hospital at Rome, in 1818, of the disease produced by the mal'aria, was 8137, and the number of deaths was 363. The number received in 1819, was 6134, and the number of deaths was 258. Bark is the only remedy employed. The Prince of the Peace, who died in 1820, took his six pounds in substance, and an English gentleman, who suffered severely from it the same year, but survived, took 13 pounds.

has long blown from the south west, is very possible. It is not however, credible, that they are the entire or even principal cause of the mal'aria there ; for this pestilence prevails in other parts of Italy remote from all marshy grounds ; it prevails near Rome over a dry surface vastly greater than the whole surface of the *Pontine marshes* ; the city itself is forty miles distant from them ; and, for the last twenty years, the mal'aria has been entering *from the north* against the current of the winds, as fast as it has *from the south*, where it is supposed to be favoured by them."—Page 198.

"The *Piazza Navona*, the *Ripetta*, and the *Quirinal* began to be dangerous above a hundred years ago, and the last has since become absolutely unsafe during the hottest months, so that, even for a century, the coming doom of Rome may be considered as inscribed on its walls, distinctly enough to have been understood by those, who well regarded the signs of the times. But within the last fifty years, when observation has been more accurate, this doom has been more apparent. The annual pestilence, which has so long reigned unmolested in the southern portions of the city, has, within that time, intruded from the north. The *Villa Borghese*, the most ample and magnificent of the Roman country houses, which was built in the seventeenth century, just outside of *Porta del Popolo*, and which, during the greater part of the eighteenth, was the scene of more luxury and splendour, than almost any spot in Italy, has, for above forty years, been considered as infected, and is now suffered to fall to ruin. The upper part of the *Corso*, and the *Piazza di Spagna*, to which strangers resort, and always have resorted in modern times, as the healthiest parts of the city, have not been entirely safe since the beginning of the present century, and are thought annually to grow worse. The public walk, which the French constructed hardly twenty years ago on the site, or nearly on the sight, of the luxurious gardens of Sallust and Lucullus, must already be avoided during the evenings of the months of August and September. The beautiful *Villa Ludovisi*, in the same quarter, has been no more

safe during the last thirty years, but the French Academy of Painting, though separated from it only by a public way, was considered till the summer of 1817, and has been condemned as dangerous, only since the death of several of the pupils in 1818.

“ Thus the last of the Roman hills, and the portions of the city, which, through a succession of ages, has been the chosen seat of its luxury, is now become the victim of the mal’aria ; so that from the *Vatican* to the *Lateran*, and from the *Villa Borghese* to the gate of *St. Paul*, there is no longer any considerable space from which those, who are able, do not escape during the hot months, and only very small portions, where, from some unexplained cause, this mysterious pestilence has not yet intruded. Outside of the walls, or in the deserted parts within them, no person will do more than pass rapidly on during the dangerous season, who can possibly avoid it.

“ On the final result of such a state of things, it is, of course, impossible to shut our eyes. The mal’aria has been for centuries constantly extending its ravages. It is a contest that has been for ages every year renewed, and every year followed by a signal defeat. The whole Campagna has been laid waste by it ; three fourths of the space within the walls of the city have been given up to its desolation ; and even in the remainder, though crowded with churches that would be cathedrals elsewhere, and with palaces such as transalpine kings do not dwell in, the unseen pestilence still goes forth unmolested. It is not, indeed, for human foresight to fix the fates of empires and cities ; but it is more in the spirit of history than of prophecy to say, that Rome must one day become what *Pæstum* and *Volterra* are now.”—Page 201.

“ The city of Rome is already within the influence of that mysterious agent, which is spread every where around the remains of its temples and tombs, as an invisible enemy, whose approach no intimation announces, and no power can resist. That this enemy will at last triumph, its past progress does not permit us to doubt. Rome herself already stands in widowed greatness amidst the desolation of the Campagna ; and its soil,

which for so many centuries teemed with splendour and power, seems now to be emancipating itself by its own secret energies, and demanding to lie fallow of glory as many ages as it bore its burden."—Page 204.

And from the *Edinburgh Review*—vol. xxviii. pages 46, 47, and 48—your Committee beg leave to make the following extracts, on the prevalence of the same disease in that ill-fated country.

"That disease is no other, we believe, than an intermittent, or an ague, of the worst kind; such as will be long remembered in England by the name of the Walcheren fever. It must not, however, be supposed, that, like this last, the fever of the *Maremma* is produced by the miasmata of marshes, or the well known causes of a similar disorder. In some instances, such causes do indeed appear to exist; but, in the greater number, the places where this evil prevails are dry, airy, and elevated. Thus *Volterra*, which is involved in the contagion of the *Maremma*, near to its western extremity, is situated on a high ground, and is open to every blast.

"The cause of the insalubrity of the *Maremma* is a mystery into which science has not yet been able to penetrate. It has often been supposed, that the pestilential air, which has depopulated the shores of the Mediterranean over so great an extent, arises from marshy ground and stagnant water. In such places as the *Pontine marshes*, which are at the eastern extremity of the *Maremma*, this supposition may be well founded; but in the greater part of the *Maremma*, in the *Tuscan* and in the *Roman* territory, it is certain, as already observed, that the soil is dry, and the ground in many places elevated high above the plain. "No visible sign," says Chateaufieux, "marks the existence of the approach of this pestiferous air. The sky is as pure, the verdure as fresh, the air as tranquil, as in the most healthy region. The aspect of all the elements is such as should inspire the most perfect confidence; and it is impossible to express the horror which one experiences on discovering that this is all deception; that he is in the midst of dangers of which no indication exists; and that, with the soft air that he is breathing, he may be inhaling a poison destructive to life." It appears to

your Committee, in confirmation of the preceding, that Rome is undergoing a very rapid depopulation. In her imperial state, her population was 1,200,000 ; in 1791 it amounted to 166,000, and in 1813 it was reduced to about 90,000.

Your Committee beg leave here to refer, in proof of the insalubrity of Rome, which they understand to be proverbial, to a medical description given of it by Dr. Valentine, of France, in a recent work, entitled "A Medical Voyage in Italy." 1820.

Dr. Valentine attributes this insalubrity, in pages 54, 55, and 56, to merely local causes—among which he enumerates the celebrated pits in which it is known that the dead are buried, and which, when opened, diffuse a most horrid stench.

The reigning diseases, according to this writer, called the *aria cattiva*, are fevers of all types and of the most malignant forms. This intelligent traveller attributes them entirely to the soil, which in every point, testifies its most poisonous effusion, and proves it to be an error to attribute the distressing mortality of Rome to the influence of the *pontine marshes*, "because," says he, "the cities of *Velletri*, *Genzano*, *Arreia*, and *Albano*, which are interposed, would be the first attained, and more sickly than Rome, while experience proves the contrary."

If then a cause of the unhealthy state of Rome is to be sought for—may we not consider it in whole or in part to arise from domestic impurities—such as are described in the following extract from the political state of Italy, by Theodore Lyman, Jr. Boston, 1820, chap. XVII, page 210, and given by Dr. Hosack at the 77th page of his Medical Police.

"To the evidence adduced," says Dr. Hosack in the preceding discourse (on Medical Police) "to show that the decomposition of animal and vegetable substances has no agency in the production of yellow fever, I subjoin the following extracts "on the manner of burying the dead in Italy," taken from a work recently published, on the customs, manners, and political state of that country.

"From the facts therein detailed, it will appear, that if animal substances, in a state of putrefaction, could engender this form of pestilential fever, that effect ought certainly to be expected

in the city of Rome, *the climate of which is so similar to our own*. They also furnish additional evidence, that burial in vaults, conducted in the manner I have recommended, (in public and private vaults, with the use of lime as hereafter noticed) may be practiced without injury to our city.

Extract from Mr. Lyman, as given by Dr. Hosack.

“All persons, who can afford it, are buried in coffins in the vaults. These vaults are about ten feet square, and seven deep, and they are opened, by means of a flat stone, in the church itself. In the hot months, in those churches where the vaults are old and badly secured, and where burials are frequent, the stench is sometimes so great that the service is omitted. This is particularly true of the church *della Madonna, in the piazza del Popolo*, owned by Prince Albani, and redeemed three times by him from the French for twelve thousand dollars. This Prince indulges in the extraordinary charity of sending for the dead poor, and burying them in this church at his own expense.

“There are one hundred and seventy-one churches in Rome allowed to receive the dead, so that while the population continues in its present state, sufficient room will always be found in the vaults for all who can afford to be buried there.

“The poor, and all who die in charitable establishments, are thrown into pits, naked, and without coffins. I went to see three pits in a small cloister behind the church of the hospital, at the end of the Corso, near the *Piazza del Popolo*—the most crowded and populous street of all Rome. This was on the 2d of January, one of the coldest days, with the clearest atmosphere, during the whole year. Nevertheless, when the flat stones, that covered the pit, just fourteen inches square, were removed, the putrid vapour arose so instantaneously, and in such thick fumes, that even the attendants moved towards the door of the cloister, till the first and most pestiferous exhalations should have passed. In the first pit there had been no deposits since the French Revolution, and it then contained only a small quantity of bones—green, moist, and mostly decayed. In the second, in which there had been no burials for several months, there was a great mass of putrid flesh, but not a body or limb, or any form or shape whatever could be discerned.

An accumulation of one hundred and twenty-two bodies, rotting, ulcerated, marked with white-bluish spots, and streaks of black. As the putrid air gradually escaped, a faint sound could be heard, and the mass of corruption was observed to sink down deeper in the pit. In the last pit they were then burying, and a wretched, emaciated body, that had been thrown in that morning, was lying across the pile, with the top of its head cut off by the surgeons, and the eye-lids hanging back in a frightful manner—the hard shrunk leg of a ghastly object was slowly pressing into a swollen and enflamed body, just ready to burst—long black hair, clotted and moistened by putrid oozings, still hung to wasted skulls, where the eyes had fallen out, and the lips had shrunk away from the teeth. Some bodies had slid down to the bottom of the pit, and near the top there appeared the legs and feet of a body still sweating and swelling with decay. There were men, women, and children, and as the mass rotted and consumed, they sunk and mixed together—a deadly yellow colour and a thick dirty sweat, seemed to pervade and spread itself over the whole heap—a cold sluggish oozing mingled with the slow, silent progress of putrefaction. I saw no living creature in this vault, neither worm, rat, or tarantula. A large torch, burning with a full blaze, expired instantly, three times, on being put into the mouth of the pit.

“The largest hospital in Rome is the Santo Spirito, and it has one hundred and thirty-six pits dug on the top of a hill, a quarter of a mile from the city. There are thirty-six pits belonging to the hospital of St. John. From the beginning of this century to the end of the year 1818, there have died in Rome, in charitable establishments, a yearly average of two thousand one hundred and thirty persons; to these add eight hundred and seventeen persons dying in houses, but buried at the public expense, making annually two thousand nine hundred and forty-seven individuals buried in pits and without coffins.

“Each burial costs one dollar, and sixty cents for transportation, wax lights, and the mass—circumstances never neglected, though the body itself should be dragged to the pit with hooks, and thrown upon the pile as if it was carrion. Such is Christian burial!”

After this disgusting account of the manner in which burials are practiced in Italy, and of the effects of them, your Committee, while they disavow, as they have before done, the least pretension to medical skill, must be permitted to express their unfeigned surprise that it should be maintained that burials in vaults even under the circumstances, and in the manner mentioned by Dr. Hosack, can be considered as safe and in-noxious, in this populous city, *whose climate, as he says, is so similar to that of Italy.*

In confirmation of the opinion of your Committee, as just expressed, against the practice of interment, though sanctioned in part by the high medical authority, under which it is recommended, your Committee will here adduce the testimony of Dr. Chapman of Philadelphia, in a review of a work on the Dangers of Interment in Cities, by Dr. Felix Pascalis, of this city.

“It is difficult,” says Dr. Chapman, “to conceive how physicians should, in any respect, be opposed to the opinion that receptacles of the dead in the midst of populous cities, are unhealthy and become often the source of wide spreading diseases—and how all the members of the medical profession, at all gifted with feelings of humanity, should not unite with Dr. Pascalis, and his reviewer (Dr. Chapman) in reprobating the pernicious custom, and soliciting its entire abolition. Already a very celebrated professor in a neighbouring college, (referring to Dr. Hosack) although he does not consider it indispensably necessary either for the comfort or health of its inhabitants, that the custom of city interments be altogether prohibited, recommends that they should be exclusively confined to public and private vaults, and that no grave ought to be permitted, under any circumstances; for such (says Dr. Hosack) is the loose texture of the soil in grave yards where this mode of burial is practiced, that as soon as the decomposition of the body has begun, the gasses which are extricated will find egress and mix with the atmosphere, rendering it more or less offensive and impure, and consequently a medium of spreading contagious diseases, that may be introduced within the sphere to which such impure air may extend.

(Hosack, Med. Pol. page 42) It is true (continues Dr. Chapman) vaults, may under certain circumstances be admitted to be innoxious ; but as Dr. Pascalis very well observes, (page 113) they cannot be depended on always—decay, accidents, or neglect, are continually at hand to undermine their supposed safety. It is to be hoped therefore, that the very learned and authoritative professor (Dr. H.) whose opinion we have mentioned above, will ere long acknowledge the danger of vaults, and extend his proscription to them as well as to graves, and that this testimony will have sufficient weight and influence on the minds of the proper authorities, to cause their entire prohibition, and to promote the establishment of appropriate places out of the city for the disposition of the dead.”

Since making the above extract from the publication of Dr. Chapman, the attention of your Committee has been drawn to another Essay of the same writer, to be found in the Philosophical Journal, for Feb. 1825, which is supposed not only to impugn but to establish a contrary doctrine from the preceding—but a moment’s attention to the object and tendency of the latter Essay, will convince any reader (except a prejudiced one) that the object of the learned Dr. Chapman, was to disprove what your Committee does not pretend to assert, that Interments are the specific and producing cause of *pestilence or Yellow Fever*, and that in truth Dr. Chapman’s testimony entirely supports the views and opinions of this Board, in passing the present ordinance.

In regard to the question, whether animal putrefaction may be ranked as an efficient cause of pestilence, it cannot be expected, that your Committee should be able give to the Common Council a regular series of historical facts; yet in confirmation of the opinion entertained by some, that it is efficient at least, in the promotion, if not in the origination of diseases of that kind, your committee refer to Gibbon’s Decline and Fall of the Roman Empire, Vol 3. Ch. xxxi. page 139, where it is stated, that at the siege of Rome under the reign of Honorius by the Gothic army, at the beginning of the 5th century, “ many thousands of the inhabitants of Rome expired in their houses, or

in the tents, for want of sustenance, and as the public sepulchres without the walls (for the Law of the Twelve Tables still prevailed) were in the power of the enemy, the stench, which arose from so many putrid and unburied carcases, infected the air, and the miseries of famine were succeeded and aggravated by the contagion of pestilential disease."

Third. As to the residue of continental Europe. Your Committee will not commit the indecorum of even imagining the possibility of any intentional mistatement of facts, or of opinions on the part of the respectable physicians, who have subscribed the paper under consideration. But it is notwithstanding utterly incomprehensible to your Committee, that this Board should be referred to continental Europe, or to any civilized country whatsoever, where laws have been enacted on the subject of Interment in cities, in favour of its admissibility in general, or to any qualified extent, whether as to private ownership or any other limitation. Wherever according to the researches of your Committee, any regulation of this kind has taken place, the object of the government appears to have been to make the prohibition as extensive as possible; while on the part of a portion only of the community the effort has been to get rid of such prohibition. But any compromise of the question is in general very rare. Your Committee will instance particularly the regulation of Louis XV. in France, before cited, which ordains in cases of interments of the *privileged persons*, therein mentioned, such as patrons, founders, high ecclesiastics, and the like, that they shall not be interred "except under vaults, covering a space of 72 square feet, built of stone and flagged, and the bodies to be placed six feet deep in the earth, under the lower pavement of the vault."

Your Committee will here lay before the Board an extract from the *Quarterly Review*, Vol. XXI. page 373, and onward, on the subject of Interment, as practised by ancient and modern nations, and in which will be found many interesting facts besides those which the time and limits of your Committee will enable them to exhibit.

"The National Convention in 1793, passed a decree, that

the graves and monuments of the *Kings* in St. Denis, and in all other places throughout France, should be destroyed.

In pursuance of this, they opened the vaults of Turenne, Henry the 4th, Louis 14th, Louis 15th, Jeanne de Bourbon, wife of Charles 5th, &c. Upon opening the vault of Francis 1st, and his family, it was found to contain six leaden coffins, and the remains were in a state of liquid putrefaction, which made its way through the lead as they were removed, and the odour was almost insupportable. The bodies of many of the latter Bourbons were also in a state of decomposition, and when the coffins were opened, they are said to have emitted a thick black vapour, which, though vinegar and gun powder were burnt to prevent ill consequences, affected the persons employed with fevers and diarrhœas.

In page 378, it is stated that "the custom of burying in temples and churches grew out of the superstitions, with which Christianity became corrupted. It had been forbidden in the pagan time. Theodosius after the establishment of Christianity, renewed the prohibition, upon the ground *that graves within the city were detrimental to the health of the living*. The introduction of the present practice began in the respect paid to the remains of martyrs. Churches were first erected over the ashes or bodies of saints and martyrs. In the sixth century, the common people were allowed places in the church yards, and even under the walls. By the time of Charlemagne, they had got into the church. An attempt was made at the council of Fribur in his reign to put a stop to the abuse. A rule which was passed at that synod, required that if the church could not be paved so that every vestige of graves should be removed, the church itself should be unchurched, and turned into a polyandrium, and the altars removed and set up in some other place. It appears however from this synod, that the clergy had established for themselves a privilege of lying in the church, for it is the burial of laymen there, which is prohibited."

The following extract from the same work, in the opinion of your Committee, is deserving the serious attention of the Common Council, as it applies to a distinguished portion of Great

Britain, to which they have been referred by the medical certificate above mentioned, and the more particularly as the publication is from the metropolis of that kingdom.

“The commissioners for the improvements in Westminster, reported to parliament in 1814 (as has been before mentioned) that St. Margaret’s church yard could not consistently with the health of the neighbourhood, be used much longer as a burying ground, for that it was with the greatest difficulty a vacant place could at any time be found for strangers ; the family graves generally would not admit of more than one interment ; and many of them were then too full, for the reception of any member of the family to which they belonged. There are many church yards in which the soil has been raised several feet above the level of the adjoining street, by the continual accumulation of mortal matter ; and there are others, in which the ground is actually probed with a borer before a grave is opened ! In these things, the most barbarous savages might reasonably be shocked at our barbarity. Many tons of human bones every year are sent from London to the north, where they are crushed in mills contrived for the purpose, and used as manure. (To which is added in a note—“The eagerness of English agriculturists to obtain this manure, human bones, and the cupidity of foreigners in supplying it, is such, as to induce the latter to rob the tombs of their forefathers. Bones of all descriptions are imported, and pieces of half decayed coffin attire are found among them.”) “Yet with all this clearance, the number of the dead increases in such frightful disproportion, to the space which we allot for them, that the question has been started whether a sexton may not refuse to admit iron coffins into a burial place, because by this means, the deceased takes a fee-simple in the ground which was only granted for a term of years ! The patentee accordingly assures the public that, he has taken Dr. Jenner’s opinion (of Doctors’ Commons) upon the point, which is, that no legal objection can be made to the interment of dead bodies, on account of the materials whereof the coffins, in which they are deposited, may be composed. A curious expedient has been found at Shields and Sunderland : the ships

which return to those ports, in ballast, were at a loss where to discharge it, and had of late years been compelled to pay for the use of the ground on which they threw it out: the burial grounds were full: it was recollected that the ballast would be useful there, and accordingly it has been laid upon one layer of dead to such a depth, that graves for a second tier are now dug in the new soil." page 360.

Your Committee solicit the attention of the Common Council to the gross and revolting abuses growing out of the practice of interment in cities and churches, which are here so justly pourtrayed as existing in the city of London.

Page 381. "The excellent Evelyn (agreeing with the testimony heretofore given of Sir Cr. Wren) regretted greatly that after the fire of London, advantage had not been taken of that calamity to rid the city of its burial places, and establish a necropolis without the walls. "I yet cannot but deplore," says he, in his *Silva*, "that when that spacious area was so long a *rasa tabula*, the church yards had not been banished to the north walls of the city, where a grated enclosure of competent breadth, for a mile in length, might have served for an universal cemetery to all the parishes, distinguished by the like separations, and with ample walks of trees, the walks adorned with monuments, inscriptions, and titles, apt for contemplation, and memory of the defunct, *and that wise and excellent law of the Twelve Tables restored and renewed*. Such a funeral grove, with proper regulations and careful keeping, would have been an ornament and an honour to the metropolis, and might at this time have been as characteristic of the English, as the catacombs at Paris are of the French."

Page 394. "The beauty of the Mohammedan burial grounds has been noticed by all travellers. The Afghauns call their cemeteries the cities of the silent; and hang garlands on the tombs and burn incense before them, because they believe that the ghosts of the departed dwell there, and sit, each at the end of his own grave, enjoying the fragrance of these offerings. The church yards in the reductions of Paraguay were so many gar-

dens. The graves were regularly arranged and bordered with the sweetest plants and flowers, and the walks were planted with orange trees and palms. The Moravians in their missions observe the same regularity and decency: the name which they give to a burial ground is, 'God's ground.' In many parts of Wales, the graves are carefully planted with flowers; and the beauty of this custom is felt by all English travellers. In Gibson's addition to Camden, it is noticed, that the custom of planting rose trees upon the graves, anciently used both among the Greeks and Romans, had been observed time out of mind at Oakley in Surry."

And yet with this testimony drawn from the commercial and literary emporium of Great Britain, we are referred by the medical certificate under consideration, to that very country for proof in favour of the practice to a limited extent, which by the London Reviewers themselves, is so successfully combated and exposed.

Fourthly. This medical certificate refers the Common Council to the experience of our own country, in support of the opinion as therein expressed in favour of Interments.

But your Committee will ask, what can be the foundation or the reason of such reference? In New-Haven there is no exemption from the general law, neither is there any that has come to the knowledge of your Committee in the cities of Albany or Washington. In New-Orleans, in Philadelphia, and in our own city, the practice is condemned in every part and to every extent of it, by medical authority itself, as has been previously shown by the publications of Dr. J. M. Picornell, of Dr. Deveze, and of the Medical Society of this city, and of others. And in the pleasant and flourishing village of Brooklyn, they have *altogether* discontinued the practice of interring in the Potter's Field, which is within its bounds, and bury their dead, in the more natural and healthful manner, at a suitable distance from their settlement after the excellent example so well described by Dr. Dwight, in New-Haven.

And in support of the views and opinions as maintained and

given in the above mentioned publications, your Committee beg permission here to present the proceedings of the Board of Health of this city in the year 1806.

Extract from the Minutes of the Board of Health, Jan. 22, 1806.

Present,

DE WITT CLINTON, President.

Alderman Fairlie,

Dr. Miller,

Dr. Rodgers,

Mr. Pintard.

The Committee of the Board of Health appointed to consider what preventive measures may be necessary to secure the health of the city of New-York, presented a Report recommending the adoption of various measures, and in relation to Internments, their Report was in the following words :—

“That the interment of dead bodies, within the city ought to be prohibited. A vast mass of decaying animal matter, produced by the superstition of interring dead bodies near to churches, and which has been accumulated for a long lapse of time. is now deposited in many of the most populous parts of this city. It is imposible that such a quantity of those animal remains, even if placed at the greatest depth of interment commonly practised, should continue to be inoffensive and safe. It is difficult, if not impracticable, to determine to what distance around, the matters extricated during the progress of putrefaction, may spread; and by pervading the ground, tainting the waters, and perhaps emitting noxious exhalations into the atmosphere, do great mischief. But if it should be decided still to persist in the practice of interment within the city, it ought to be judged necessary to order the envelopement of the bodies in some species of calcareous earth, either quick lime or chalk. The present burial grounds might serve extremely well for plantations of grove and forest trees, and thereby, instead of remaining receptacles of putrifying matter and hot beds of miasmata, might be rendered useful and ornamental to the city. *This growing evil must be corrected at some period, for it is increasing and extending by daily aggregation to a mass already very large;*

and the sooner it is arrested, the less violence will be done to the feelings and habits of our fellow-citizens."

This Report having been approved, was sent with a memorial to the Legislature by the Common Council, and was no doubt influential in convincing the State Legislature of the impropriety and danger of the practice of Interment, as therein pointed out.

Your Committee will now take the liberty to submit another piece of evidence to the Common Council relating to the much controverted question of the cause of the Yellow Fever, and in favour of its domestic origin, with the preliminary remark only, that if this greatest enemy to the growth and prosperity of our city can be supposed to take its rise among us, then every source of injurious exhalation becomes doubly an object of exclusion and prevention, since in that case every impurity whatsoever must be considered tributary as a *cause*. And indeed on the other hypothesis of its foreign importation, it ought to be an object of the most unceasing solicitude to prevent every thing like a nuisance in the city or its neighbourhood, for reasons of the most obviously prudential kind. The document referred to by your Committee is as follows:—

"The inclosed list of physicians, resident in the city of New-York, has been furnished to Moses N. Chervin, M. D. who visited this city for the sole object of obtaining testimonials on the origin, and the contagion or non-contagion of the Yellow Fever. Hereceived double certificates from every gentleman here named, 44, who profess to believe that the Yellow Fever is of domestic origin, and is not contagious; and three, who think that it is imported and consequently contagious."

"This list was published in Baltimore in 1822, and will appear very soon in the work of Dr. Chervin now in the press at Paris."

*Samuel L. Mitchell, .
William Moore,
John Onderdonk,
Wright Post,
John R. B. Rodgers,
Benjamin Prince,*

*Thomas Cock,
Henry M. Van Solingen,
Wm. Hamersley,
William Handy,
Thomas Boyd,
Samuel Osborn,*

John Watts,
 Daniel M. Hitchcock,
 J. D. Jaques,
 Cyrus Perkins,
 James R. Manley,
 Gilbert Smith,
 H. M'Lean,
 William Barrow,
 Richard L. Walker,
 William Stillwell,
 Benjamin P. Kissam,
 Daniel Lord,
 Valentine Mott,
 Charles Drake,
 Peter C. Tappan,
 John C. Cheeseman,
 Alex. H. Stevens,
 Samuel Akerly,

March 21st, 1823.

Samuel Borrowe,
 Felix Pascalis,
 John Neilson,
 Anthony Anderson,
 William Jas. M'Neven,
 James B. Bliss,
 Peter B. Helme,
 Nicoll H. Dering,
 Isaac Wood,
 *William H. Ducachet,
 William F. Seaman,
 Lewis Belden,
 Stephen Brown,
 John Baxter,
 Daniel W. Kissam, Sen. & Junr.
 *John W. Francis,
 *David Hosack.

A true copy,
 FELIX PASCALIS."

NOTE. The testimony of those marked thus * is for contagion ; of the rest for non-contagion.

Your Committee will here introduce an extract from the medical and philosophical essays of Dr. L. E. W. Shecut, member of the literary and philosophical society of South Carolina, illustrative of the domestic origin of the Yellow Fever in Charleston.

"The causes that are productive of the highest class of infection, are found to consist of the following:" and under this head he enumerates—"2nd, *Animal putrefaction*, or the decomposition of animal substances, whether in bodies of men, or of beasts, putrid flesh or fish, or the offals of either ; Next to them, (he says) we may add the effluvia of sinks and drains."

Your Committee must acknowledge that they were not prepared to expect such a solid body of evidence in favour of this theory ; and if they do not greatly deceive themselves, this paper alone would carry conviction to every mind, that every

thing like nuisance ought to be excluded with the same vigorous and energetic determination, that we would exclude from admission the most dangerous foreign enemy ; and this can present no point admitting of uncertainty or qualification. Is the thing offensive, we ought to shut it out, or exterminate it as we would crush the crocodile in the egg—for out of it may proceed our most deadly foe. On this theory there can be no half way measures or compromises whatsoever, with any subject or source of pestilential or injurious exhalation, however minute or apparently unimportant, that admits of exclusion.

Your Committee beg here to be explicitly understood. They are not the advocates of any medical theory, especially on the subject of the Yellow Fever, nor do they intend to sanction any on this occasion. But they have thought it to be their duty to exhibit the opinions of others, which might have a bearing on the present inquiry.

Your Committee will now notice two or three arguments that are very commonly brought forward, and were urged before them by the petitioners for a change in this law.

The one is *that Sextons are, and have been, remarkably long lived.*

To which your Committee would reply, that the same thing may be said of many other persons, whose employments are extremely filthy and disagreeable. The force of custom as to vicious habits, and also employments, which are in themselves unhealthy, is well known. The old adage that “use is a second nature,” is perhaps not less well founded than it is trite—and in support of it, as applicable to the great question before us, your Committee will beg leave to cite a few authorities.

In a work, entitled “The Modern Practice of Physic,” by Robert Thomas, M. D. with an Appendix. by David Hosack, M. D. and at page 974 of the Appendix, it is said, “The well known facts relative to the communication of jail fever to the Judges, and others present, at the Old Bailey in 1750, while the prisoners remained in health, insensible to infection, furnish incontestible evidence of the effects of habit in diminishing the

sensibility to the poison of fever; and, with regard to the yellow fever, it assuredly has not been the case in the United States, that those who are most accustomed to the impure air of the place, in which the disease prevailed, were more susceptible of the disorder than those who had recently arrived from the pure air of the country, or from the more elevated parts of the town."

In page 974, of the same book, there is an extract, being an observation of Dr. Blane, as follows:—" *Infection, like some other poisons, does not so readily affect those who are accustomed to it, and therefore those who are in the habit of being exposed to it, frequently escape its bad effects. For the like reason, physicians and nurses are less susceptible than others.*"

In page 978, after enumerating many facts, the writer, Dr. Hosack concludes—"That an impure *atmosphere* is indispensably necessary to *multiply* and *extend* the specific poison, constituting *plague, dysentery, typhus* and *yellow fever*."

"And that the predisposition of those who are most *exposed to such impure air* is less, while those who reside in the country, are most liable to be infected when exposed to the contagion."

In pages 986 and 988, there may be found many similar facts and conclusions.

Another observation, strongly urged by the petitioners, is, *that the neighbourhoods of church yards are as healthy as other portions of the city.*

This remark, would seem to have much plausibility and apparent force; but your Committee would ask, whether the same observation does not equally apply to the neighbourhoods of *docks, slips, heads of sewers, the collect grounds, heaps of manure, slaughter houses, the market places? &c. &c.*

But these will scarcely be considered or ranked as places desirable for residence on account of their salubrity.

The fact on this subject, as your Committee are fully convinced, is, that the cause of unhealthiness is extremely difficult to define, being very subtle, and compounded of many ingredients. And laying aside the fascinations of theory, which often bewilder and confound the understanding, your Committee

substituting in their place the deductions of common sense, do not hesitate to recommend to this Board, and through them to their fellow citizens, such a course of policy as will have for its object the removal and prevention of every possible nuisance, more especially *those of a voluntary kind*, and therefore for which there is no reasonable excuse.

But can it be seriously urged that grave yards and vaults are inoffensive and not injurious, nay, dangerous to human life?

If they are not, why is it the common practice to set the latter open many hours previous to the act of interring?

If they are not productive of the most deleterious effects in the estimation of people, in general, and according to the common sense of mankind, and in the opinion of the Trustees of one of the largest and most influential churches in this city, standing in one of the most public situations, who have made large preparations for interring the dead in their ground, and under the church itself, contrary, your Committee have no hesitation in saying, to the united and admonitory voice of experience and propriety—why, your Committee will respectfully inquire, is it that ventilators have been constructed under the floor of this church, and connecting with the main passage-way leading to the vaults beneath?

Your Committee refer to the brick Presbyterian Church, where such openings may be discovered, and from which it is apparent, that danger was apprehended, from the effects of those poisonous and most destructive exhalations, which are known to originate in such receptacles of the dead, either to the sextons and others in entering the vaults, or to the congregation, from their injurious effects upon the air of the church. This fact alone, is, in the opinion of your Committee, in place of a host of witnesses, and a volume of testimony, to prove beyond all doubt or question the dangers that are to be apprehended from this source. There are in this ground, including those under the church, 52 vaults, 48 of which are private, and 4 of which are public vaults; and, according to a diagram furnished

to your Committee, 32 of these are beneath the floor, and within the walls of the church.*

Your Committee on due consideration, and with every feeling of respect to the distinguished physician, whose opinions are now to be noticed, have concluded to present the following extract from a work, entitled "Observations on Febrile Contagion, and on the means of improving the Medical Police of the city of New-York, delivered in the College of Physicians and Surgeons, on the 6th of Nov. 1820, by David Hosack, M. D. Resident Physician," &c. &c. page 41, 42.

"Thirdly. It may be observed that the practice of interring the dead in the cemeteries of the city, calls for some additional police regulations.

"I do not consider it indispensably necessary (he continues) either that this custom should be altogether prohibited, but I would recommend that interments should be exclusively confined to public and private vaults, and that no grave should be permitted under any circumstances: for such is the loose texture of the soil in grave yards, where this mode of burial is practised, that as soon as the decomposition of the body has begun, the gases, which are extricated, will find egress, and mix with the atmosphere, rendering it more or less offensive and impure, and consequently a medium of spreading contagious diseases that may be introduced within the sphere to which such impure air may extend. Another measure, calculated to counteract

* Since this Report was read, the Committee have ascertained that in the grant for the ground, on a part of which has been erected the Market-street Church, by Henry Rutgers, Esq. to Philip Milledoler, James M. Mathews, Peter Wilson, Isaac Hyer, Peter Sharpe, Matthias Bruen, and Willaim B. Crosby, as Trustees, the following is inserted as one of the conditions:—"That neither they, the said Trustees, or their successors, shall, at any time, permit or suffer any vault or vaults, grave or graves to be sunk within the bounds of the aid above described five lots of ground, except one vault for the use of such ministers as shall be settled in the said church, and their families."

The object and motive of this condition, it is presumed, cannot be mistaken. The deed bears date on the 25th of November, 1816, and the record of it may be found in the office of James W. Lent, Esq. City Register in Lib. No. 140 of Conveyances, &c. page 47.

offensiveness in vaults, and absorb and decompose the impurities that they may contain, will be to cover the floors with a stratum of lime, several inches in depth, and to cover the walls with the same materials."

Your Committee have introduced this extract for the purpose of comparing its several parts with each other, of submitting the whole to the investigation imposed on them by the duties of their appointment, and of drawing such conclusions from the discussion as shall appear conformable to right reason, and be capable of being apprehended by the common sense of mankind. The proposition, then, is, that graves should be closed, and the use of vaults, public and private, be allowed. The reason given, is, that the loose texture of the soil by which *grave*s are covered, will permit gases to escape, that will render the air more or less impure, and a medium of spreading contagious diseases—while, with regard to *vaults*, the proposed precautions are to cover the floors with a stratum of lime, and the walls with the same material. In attending to these statements, it must not be forgotten, that, in the case of graves, the interment of the body must be six feet below the surface; whereas, in the case of a vault, the depth of earth thrown over the mouth of it does not exceed 2 or 3 feet, and the statement of Dr. Hosack is, that by means of the loose texture of the soil in grave yards, the offensive and impure gases *will escape* and affect the atmosphere—and the intended statement, or at least the inference is, that through the thickness of earth thrown over a vault, the gases *will not escape*.

But upon comparing and examining these propositions as to graves and vaults, there is this manifest difficulty, which your Committee cannot solve by any mode of reasoning in their power, or any knowledge, on their part, of the laws of matter, that offensive and impure gases will be more apt to be confined and to remain, as it were, pent up in a prison house, with a covering of earth 2 or 3 feet in depth, than if the covering of earth were of six feet in depth—unless, indeed, the proposed covering of the floor and walls of the vault with lime, is to have the

effect of neutralizing these gases or preventing their escape—and the more especially and the more forcibly does the difficulty press itself upon the mind of your Committee, when they consider that the depth of earth over the mouth of a vault being only 2 or 3 feet in thickness, will be apt to lie the more lightly, than if its thickness were greater;—and when they consider, also, that the ground thrown over the mouth of a vault is removed, and consequently rendered more loose and porous, with every new deposit of a dead body, which, in the case of a public vault, is done every few weeks or months, and in the case of a private or family vault, is done every few years;—whereas, in the case of a grave, the presumption is, that it will never be disturbed, or at least until the process of putrefaction is at an end, and the body is reduced to its native dust. And it must be added, that vaults may and do contain many bodies, but graves contain but one. Your Committee cannot, therefore, but believe, that there is something wrong either in the premises, or in the reasoning of the learned author; and the cause of truth, in the opinion of your Committee, requires that the error, if there be one, should be promptly and explicitly understood.

And, as your Committee think, the error lies in supposing that the prohibition ought to be extended to graves, and that vaults should be tolerated; in other words, they are of opinion that the reverse of the proposition of Dr. Hosack would be far more correct—since it is, and must be apparent, that the practice of interment in graves, is by far the most harmless and inconsiderable fraction of the evils arising from interments—and that this must result with almost mathematical certainty, when we compare the depth of earth used for covering a grave and that used for covering a vault—and consider that in the case of a grave, the ground is, or ought never to be disturbed—and that a vault is covered slightly over, and with an express view to the removal of its covering—and contains a much greater quantity of putrefactive matter, at a time, than a grave.

Your Committee will now subjoin various certificates, which go to prove the injurious effects of grave yards, and burying places, generally; and if an exception can be found in favour

of private vaults, after what has been already exhibited, and may follow hereafter, your Committee will be as much gratified at the discovery, as any member of this Board can be, who shall make it.

“ To the honourable the Mayor, Aldermen, and Commonalty of the City of New-York, in Common Council convened.

“The petition of the subscribers, resident in the vicinity of Trinity and St. Paul’s Churches, respectfully sheweth—

“That the burial grounds attached to the above churches have been in constant use, particularly the former, for near a century past. That during that period the bodies of thousands after thousands have been interred therein, and that as a necessary consequence, they have now become crowded to such an excess, that it requires the interference of your honourable body.

“That, independent of the considerations arising from the health of the city, there are others which although not so *immediately*, are yet by some *equally* felt. The sacrilegious practice of removing the remains of one set of individuals, to make room for those of another, thereby, if not violating the rights of the dead, certainly infringing on the feelings of the living.

“That, during every hot season, the effluvia, arising from these cemeteries of corruption, are exceedingly offensive, and necessarily highly deleterious to the health of the surrounding inhabitants.

“Your petitioners represent that in Trinity Church Yard alone, one hundred and eleven have already been buried this year; and as far as observation has extended, in procuring each of them a grave, the remains of some other tenant have been unfeelingly heaped together, and cast into a large vaulted recess, which is now open to public view, the bare inspection of which must convince your honourable body of the force of the suggestions of your petitioners.”

The petitioners then pray that further interments may be prohibited in those grounds, and in all other places south of a line to be drawn by the Common Council. Dated March 15, 1822.

Signed by Charles Wiley, Oliver Halsted, Thomas B. and A. Stokes, Anthony W. Trappan, P. Flandin, P. L. Vandervoort, Joseph Brewster, Charles Ames, W. B. Gilley, A. J. Voorhees, J. W. Forbes, Curtis Clark, and others.

"We whose names are hereunto subscribed, certify that before and during a part of the time of the prevalence of the late yellow fever in New-York, we resided in the neighbourhood of Trinity Church burying ground; that we were frequently annoyed with the offensive effluvia arising from the said burying ground, and particularly so when the wind swept over its surface, before reaching us. The stench was so powerful, as to oblige many of us, to shut the doors, and windows of our stores and dwellings, to keep out the disagreeable and sickening smell. Signed by Joseph Brewster, Richard M'Kensie, Henry I. Megarey, William Gale, Clark, Pelletreau & Upson, and others. New-York, Nov. 2, 1822."

Extract of a letter from Jonathan Fisk, Esq. to Dr. Samuel Akerly, dated Newburg, July 7, 1824.

"DEAR SIR—I have received your favour of the 28th ult. You ask me for a statement of the facts I mentioned to you, relating to the Dutch Church Yard, corner of Liberty and Nassau Streets. During the summers of 1816 and 1817, I resided at No. 39, Liberty Street, directly opposite the church yard. *In the hot months, whenever a vault was opened on the side of the yard next to my residence, a very offensive stench was emitted from the vault, to such a degree, that we were compelled to shut the door and windows looking into the yard. Being frequently annoyed with this nuisance, I remonstrated with the Sexton against his opening the vaults in the morning, and permitting them to remain open during the day, to the annoyance of the neighbourhood. His reply was, "that it would be as much as his life was worth to go into the vault, until it had stood open some time to air."* I applied to the Mayor to correct the proceeding. He said it was a subject of so much feeling with the citizens, that the Corporation would not interfere to regulate interments."

It appears to your Committee, on inquiring of the city Inspector, that in this Church Yard, there are 7 public, and 46 private vaults.

Your Committee have further evidence in their possession as to this church-yard, showing, "that when the vaults in it have been opened, they have emitted very disagreeable effluvia, so much so that the family occupying the house adjoining it on the Cedar-street side, complained, and occasionally closed the windows opening into the yard, to exclude the disagreeable effluvia arising from an open vault. That it was said also, that persons who had been about the entrance of open vaults in that yard, were sensibly affected by the stench, which produced a disordered stomach."

Your Committee will now bring to a conclusion their collection of documentary evidence, by introducing the following presentment of the Grand Jury of the city and county of New-York, in the December term of the court of Sessions of the year 1822, which the Common Council will recollect was immediately after the visitation of Yellow Fever in that year.

"December Term, 1822.

"General Court of Sessions.

"The Grand Jury in and for the city and county of New-York, in terminating their legal duties, feel it incumbent upon them to present to the court, and through the court, to the legislature of the state, a few remarks upon the epidemic which lately prevailed in this city with such reflections as the nature of the calamity is calculated to suggest. It is well known, that our city has been at several periods afflicted with a disease, known by the name of Yellow Fever, which has been more or less fatal, according to the heat of the season.

"Privations and sufferings have been severely felt, during the existence of the calamity, *but in a great degree lost sight of, in the bustle and activity incident to returning health*, and it is reasonable to suppose that unless the subject meets with the early and earnest attention of our public authorities, by the adoption of prudent and timely measures, the same causes may produce

the same effects, and the lives of our citizens, and the prosperity of our city become annually hazarded.

“The Grand Jury will not permit themselves to go into any abstract view of the causes which produce Yellow Fever; nor will they adopt the different theories or arguments of the medical profession on this subject.

“It is generally admitted that the Yellow Fever is not an endemic disease of our climate, but originates from causes within our control. It is either imported from unhealthy climates in southern latitudes, or is generated by impure causes in our city; *consequently both sources of disease should be provided against.* In presenting this subject to the attention of the court, it is the intention of the Grand Jury most respectfully to recommend the adoption of such *extensive, permanent, and efficient* measures, that with the aid of Divine Providence, our city may in future be exempt from this dreadful pestilence.”

And after enumerating various means of prevention against the attacks of Yellow Fever, and of preserving the public health, they proceed to remark, that “much discussion has taken place, and some diversity of opinion expressed on the subject of Interment within the populous parts of the city. The Grand Jury are of opinion, that *the custom* is highly obnoxious, and may be *one of the exciting causes* of disease in a climate so peculiarly affected by the heat of summer. They beg leave therefore *strongly to urge its discontinuance.* They are aware that on this subject strong prejudices are to be encountered; these however will yield to the pressing call of *public safety*, and the urgent necessity of guarding the *public health.* On this subject their impressions may be incorrect, but if there exists the remotest possibility, that Interments within the city may be productive of disease, there can be no hesitation in saying that the *practice* should be discontinued.”

Which presentment was signed by all the Grand Jury, to wit :

Stephen Price,
W. B. Crosby,
Francis Cooper,
James Heard,
Thomas Callender,

James Warner,
Philip Hone,
Noah Brown,
Mw. Reed,
William Cairns,

John S. Avery,
Henry Brevoort, Junr.
Stephen Gould,
Whitehead Hicks,

Stephen Baker,
Duncan P. Campbell,
Herman Thorn.

The Committee since their appointment, have received a communication from Dr. Samuel L. Mitchill, on this all-important subject, which they deem it proper to submit to the Common Council.

“New-York, May 30, 1825.

“*To the Law Committee of the Common Council.*

“I write you a few lines pursuant to your request. It has pleased the Creator to ordain that all organized beings in this world, should have but a temporary enjoyment of life; or in other words should die. Man is included in this solemn decree.

“By reason of the power he possesses to procure subsistence, the numbers of his species increase; and his gregarious disposition leads to the construction of villages and cities.

“Among other considerations forcing upon the minds of the living, is that of the manner of disposing of themselves when dead, as well as of their fellow creatures who take no heed about it.

“By the departure of life, all the social, moral, agreeable, and useful connections are dissolved. The defunct individual, however agreeable or lively before, now becomes offensive and disgusting, and the early and correct dictate of nature was to remove such an inanimate being from the presence and society of the living, or to render it harmless.

“Various expedients have been employed to dispose of the dead. In some nations they have been occasionally consumed by fire, as among the Romans at times. The Hindoos throw human carcasses *into the sacred water of the Ganges*. In the Polynesian Islands and along the Columbia and Missouri Rivers, it is common to place a deceased chief in his *canoe*, or on a *stage*, and leave him to putrify in the open air. The ancient Egyptians were fond of *embalming*. But the prevailing practice has been to deposit the *dead in the earth*.

“There were two modes of doing this; one by *close inhumation*

tion in graves, and the other by *loose* inhumation in caverns or vaults, natural or artificial. There the bodies were left to rot, or to undergo spontaneous decomposition. But even in these cases the natural horror produced by death and its unavoidable deformity, led to the establishment of burial places at considerable distances from the abodes of the living.

“So the practice seems to have been among the Hebrews of old, and the Mahometans of the present day. It is chiefly among Christians, especially of the Roman or Western church, that innovations have been made upon the ancient and immemorial mode of interment. This arose from the desire of the faithful to lie in *consecrated* ground, and to enjoy the supposed benefit of *Christian burial*. This religious sentiment filled the *church yards*, and in process of time the *substructures* of the churches themselves, with human corruption. In the course of ages, this begot such a nuisance in various places of worship in Italy and France, as to call for public correctives.

“Our Protestants, especially such of them as do *not* consecrate ground, *nor* perform a burial service, ought to renounce magnanimously, the accumulation of this filth and impurity, around and under the houses for devotional exercise.

“It has been said that the earth purifies the contents of the grave. It does this precisely upon the same principle, that water in cleansing clothes becomes itself foul—and towels and handkerchiefs grow unclean in proportion to the filth they remove.

“If the practice of impregnating the same soil again and again be long enough repeated, it must at length become saturated and finally supersaturated. The public ordinance stops the evil at an early stage; and I earnestly hope that so impure and unnatural, as well as unnecessary a custom, will not be renewed.

Truly, and with great esteem and regard, yours,

SAMUEL L. MITCHILL.”

Your Committee have now submitted to the Common Council, some of the facts and circumstances, with which they have become acquainted on the subject of Interment, and the propriety of its continuance, in the populous parts of our city; and, unless they greatly deceive themselves, the current of au-

thority as shown from history, and the weight of evidence as drawn by fair induction from these facts and circumstances, as well as from opinions and observations, present their united force in favour of the spontaneous dictate of nature, and of inspiration itself, which each individual is disposed to adopt, and in the language of the latter to say, "*let me bury my dead out of my sight.*"

The construction of this phrase so full of meaning, and so expressive of sorrow, is furnished to us by our own experience and reflections; and accordingly, when death has passed before us in terrible and desolating majesty, and the wife of our bosom, or the child of our love, the parent to whom we are bound by the ties of consanguinity and affection, or the friend with whom we have held sweet converse, has been torn from our embrace, and has ceased to delight our existence,—and after we have committed the remains to the tomb, how naturally and with what promptitude do we choose the sequestered shade, and the bosom of solitude, to contemplate at intervals the memory of the beloved and departed object of our affections. And if in that shady retreat, and in the depth of that solitude, the mound should be raised, and the stone be placed, which should remind us of the form and recall the name of that object, how sacred would be the retreat and how amply should we experience the pious consolations and the joy springing out of sorrow, at our periodical visit to the grave, compared with a walk through our church yards in the midst of our city, interrupted as we are, by the bustle, and noise, and the sports that are around us.

And it will be found accordingly, that our ancestors and predecessors, were not unmindful of the evident propriety that exists in nature, as well as that which results from experience and observation, on this subject.

The first charter of our city, which bears date the 22d April, 1686, referring to the burial place then recently established and thereby granted to the city, and which is now attached to the Trinity Church, at the head of Wall-street, calls it "*the new burial place, without the gate of the city,*" and grants it by that description.

At that period, the population must have been, as well as can be calculated, about 4000; (as according to Dr. Morse and Mr. Spafford, in 1697 it was 4302,) and was, as must be supposed, confined to the neighbourhood of Coenties-slip, Old-slip, and Great Dock-street. Of course the burial place was not only *without the gate*, but was a considerable distance from the busy and densely inhabited portion of our then infant city.

The Jews' burying ground, the remnant of which is now in the rear of the Tradesmen's Bank, between James and Oliver-streets, was purchased by that people on the 17th December, 1729; and we all have heard, (for few of our oldest citizens can now remember) what was the distance of that ground from the then thickly inhabited parts of the city—it was in familiar language 'far out of town'—and the then population of our city may be computed at about 8000. The ground of the Brick Presbyterian church was leased to their trustees by the Common Council of this city on the 25th February, 1766. Your Committee will not take up the time of the board, by describing, what was as they understand, the state of the city at that time, as to its progress and improvements—but they will state generally, that this site was far beyond the dense population, and that the present Park grounds, were unenclosed, and continued so to be, until within the recollection of your present Committee, and were called, and the appearance justified the appellation, "*The Fields*." The lease was to the Ministers, Trustees, &c. of the angular piece of ground on which the church then stood, on condition that they should enclose the same and erect a church thereon, or on a part thereof, or use the same, or a part thereof, for a cemetery or church yard, and not appropriate the same to private uses.

At that time the population of our city did not exceed 14 or 15,000, as, according to Dr. Morse, in 1756, it was 13,040. Our census shows that in 1820, our population had increased to 123,706, and it may now be estimated at not far from 150,000.

In the conclusion of this part of their Report, your Committee cannot avoid presenting (on account of the exact similarity of the circumstances described, as applicable to our city) the

following extract from an account as published relating to Liverpool, connected with a description of "the Low Hill Cemetery," in the neighbourhood of that City.

"But whatever diversity of opinion may prevail respecting the modes or ceremonies observed in the disposal of the body after death, *the places selected for the interment of the dead, in every country, have been as far removed as possible from the busy haunts of men.*

"The burying grounds, which deface our native town, appear to form, indeed, a striking exception to this rule, *but we must observe, as some apology for the unsightly appearance of graves and tomb stones in the immediate vicinity of our streets, that the living have obtruded upon the dead, whose dormitories were not formerly, as they now are, in the very centre of a dense population.*"

Your Committee will now state that, as appears from their former Report, there have been but 51 interments within the prohibited limits since the present law went into operation, which was in June, 1823. That, during the year preceding the ordinance, there were 821 interments within those limits, and that there are within the said limits, 87 public or church vaults, and 417 private or family vaults.

In regard to the claims of the owners of private vaults for permission to use them, they have been previously discussed by your Committee, and they have only to add, that the pathetic and affecting considerations, which have been urged upon your Committee, besides those previously stated, arising from domestic and family attachments, and devout preparedness for death, with reference to the chosen and consecrated spot, where are deposited the remains of their ancestors, and brethren of the same religious faith with themselves, are most powerfully addressed to the sympathies and social feelings of our natures—and will no doubt be respected by the Common Council, and produce on their part the same difficulty that your Committee do most readily acknowledge has embarrassed them throughout the enquiry, of reconciling the considerations of public duty on the one hand, with feelings of private attachment on the other—and, in such a struggle, your

Committee are compelled, as others have done before them to give to the scale, in which are placed the interests of the public, the preponderance—and to declare their inability to sanction a compliance with the wishes of their neighbours, their friends, and their fellow citizens, when they are placed in the opposite scale.

As it regards another question not embraced in the present reference, and therefore not before your Committee, of compensation to the owners of vaults, it is one which is always open for the decision of this Board; but for the reason just given, if not for another arising from the pendency of suits, for and against this Board, as stated in their former Report, particularly the one brought by the Trustees of the Brick Church against the Common Council, your Committee abstain from any opinion at present on this subject.

Your Committee therefore conclude, by recommending the following resolutions:—

I. *Resolved*, That it is inexpedient to alter the present law on the subject of interment, as requested by the petitioners.

II. *Resolved*, That it be recommended to the Churches, and religious societies, to extend their places of interment as far as possible beyond the line of Grand Street, and not to permit the deposit of a large and inconvenient number of dead bodies, in any tomb or vault, in any one field or inclosure.

III. *Resolved*, That the Committee on lands and places, be, and they are hereby requested, to proceed with despatch in the preparation of the city burying ground, for the purposes to which it has been appropriated, so that this board may have it in their power to accommodate the churches and religious societies, as well as individuals, with ground for interment, if such an arrangement should become desirable.

Respectfully submitted,

S. COWDREY,
E. W. KING.

New-York, June 4, 1825.

In Common Council, June 9th, 1825.

The question was taken on agreeing to the first resolution of the Committee, and was carried in the affirmative. A division having been called by Mr. Dunscomb, the members voted as follows:—

Affirmative—Mr. Recorder, Aldermen King, Cowdrey, Webb, Reed, Mann, Taylor, and Ostrander. Messrs. St John, Agnew, Burtzell, Hedden and Cox—13.

Negative—Aldermen Wyckoff, Ireland, and Davis. Messrs. Bolton, Hone, Dunscomb, and Rathbone—7.

The second and third resolutions were then adopted.

Extract from the Minutes.

J. MORTON, Clerk of Common Council.

In Common Council, June 20, 1825.

A proposal from Messrs. Collins & Co. to print for sale, the Report of the Committee on Laws, on Interment, and to furnish a copy to each member, was agreed to on condition that the printing was done under the direction of the Committee on Laws.

Extract from the Minutes.

J. MORTON, Clerk of Common Council.

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